

From: Jason Peltier

Sent: Saturday, January 3, 2015 9:27 AM

To: David Bernhardt; Daniel O'Hanlon (dohanlon@kmtg. com); Jon Rubin; Philip Williams

Subject: Fwd: [env-trinity] Times Standard: Interior opinion upholds Humboldt's right to promised Trinity water

Begin forwarded message:

From: Tom Stokely <tstokely@att.net>

Date: January 3, 2015 at 8:25:42 AM PST

To: Env-trinity <env-trinity@velocipede.dcn.davis.ca.us>

Subject: [env-trinity] Times Standard: Interior opinion upholds Humboldt's right to promised Trinity water

Reply-To: Tom Stokely <tstokely@att.net>

<http://www.times-standard.com/general-news/20150102/interior-opinion-upholds-humboldts-right-to-promised-trinity-water>

Interior opinion upholds Humboldt's right to promised Trinity water

TIMES-STANDARD FILE PHOTO A U.S. Department of the Interior legal opinion released Friday calls for Humboldt County and downstream water users to receive the annual 50,000 acre-feet of Trinity Reservoir water promised to the area under a law and a contract approved nearly 60 years ago.

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*By **Will Houston**, Eureka Times-Standard*

Elected and tribal officials applauded a U.S. Department of the Interior legal opinion released on Friday, which calls for Humboldt County and downstream water users to receive the annual 50,000 acre-feet of Trinity Reservoir water promised to the area under a law and a contract approved nearly 60 years ago.

"Humboldt County's annual right to 50,000 acre-feet of water from Trinity Lake is not a close call — it was explicitly guaranteed by statute and in a federal contract six decades ago, but these commitments have been ignored by the federal government," California's 2nd District Congressman Jared Huffman said in a statement. "I'm gratified that the solicitor thoroughly examined this issue and that the Interior Department heeded my requests to publicly release the solicitor's findings. The disclosure of the solicitor's legal opinion confirms the position I have argued for the past two years and is an important step toward honoring the promise Congress made 60 years ago."

The Dec. 23 opinion was drafted in response to a request from the department's Bureau of Reclamation, which acts as a water management agency overseeing several hundred dams across the country, to address the two provisions — one in the 1955 law passed by Congress that established the Trinity River Division and the other in a subsequent contract between Humboldt County and the bureau in 1959. The two provisions have caused numerous legal confrontations with Central Valley water users. The first provision states that only Trinity River Division water — other than that

needed to protect Trinity River fish — can be exported into the Central Valley, and the second provision provide that there be at least 50,000 acre-feet of water released annually for the benefit of Humboldt County and downstream water users.

Since the passage of the 1955 law, the bureau has made preventative water releases several times — including within the past three years — to cool waters in the Trinity and lower Klamath rivers to prevent fish kills like that of 2002, which left tens of thousands of fish dead on the lower Klamath. In 2014, the bureau released a preventative flow and an unprecedented emergency flow after a deadly parasite was discovered in a sample of fish, but the releases were challenged by Central Valley Project water users in subsequent lawsuits. The challenge for the 2014 preventative release was made by two Central Valley water districts, but a U.S. District court judge in Fresno denied the petition for a temporary injunction last year.

The Interior Department opinion refutes previous arguments that these preventative releases in the first provision of the law count toward the 50,000 acre-feet allotment in the second provision.

“The prior interpretations generally deemed water to satisfy Humboldt County and downstream water users under Proviso 2 as being subsumed within the fishery releases of Proviso 1,” the opinion by Department of the Interior Solicitor Hilary C. Tompkins states. “It is my conclusion that these interpretations may not be consistent with the distinct purposes of the two provisos. I conclude instead that the better reading of the statute is that the two provisos authorize and may require separate releases of water as requested by Humboldt County and potentially other downstream users pursuant to Proviso 2”

The bureau’s Mid-Pacific Regional Director David Murillo wrote a message to tribes and stakeholders on Friday, stating that the department has also drafted a long-term plan “that will serve as general guidance for considering and possibly undertaking actions to protect adult salmon in the lower Klamath River.”

“We look forward to taking the next step to determining uses for this water, and coordinating flow releases with resource agencies that will best benefit our North Coast communities,” 5th District Humboldt County Supervisor Ryan Sundberg said in a statement on Friday.

Hoopa Valley Tribal Fisheries Director Mike Orcutt, who has been working on this issue for several years, stated that Interior’s recognition that the two provisos each refer to “a separate and distinct water supply is a very, very very important decision to have been made.”

Though there is still potential litigation relating to preventative releases in 2013, Orcutt said the opinion and draft plan for the lower Klamath will bring a lot to the table.

“I think it loads us up and gives us more assurances. There won’t be as much uncertainty,” he said. “... That 50,000 feet of water is a substantial volume of water in this day and age.”

Will Houston can be reached at 707-441-0504.

env-trinity mailing list

env-trinity@velocipede.dcn.davis.ca.us

<http://www2.dcn.org/mailman/listinfo/env-trinity>

From: Smith, Ryan A.
Sent: Tuesday, January 6, 2015 4:16 PM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: David

Tom,

David will be in by 8 tomorrow morning, but has to leave by 9.

See you tomorrow morning.

Best,

Ryan

Sent via the Samsung Galaxy Note® 3, an AT&T 4G LTE smartphone

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From: Bernhardt, David L.

Sent: Thursday, January 8, 2015 5:40 AM

To: 'Denny Rehberg'; Dennis Cardoza; Ckaren@sidley.com; Thomas W. (Tom) Birmingham Esq.; Joseph T. Findaro

Subject: Fwd: Drought bill negotiations 'hot and heavy' -- Feinstein

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Drought bill negotiations 'hot and heavy' -- Feinstein

Debra Kahn and Nick Juliano, E&E reporters

Published: Thursday, January 8, 2015

Negotiations between California lawmakers over water management during the state's historic drought are continuing, Sen. Dianne Feinstein (D-Calif.) said yesterday.

Congressional solutions to California's drought over the past year have centered on increasing water deliveries to farms and cities in the southern half of the state. To do that, lawmakers have targeted Endangered Species Act protections for delta smelt and several salmon species that inhabit the Sacramento-San Joaquin River Delta, the state's main water hub, inflaming long-standing geographic tensions in the state over how much water is reserved for farms versus endangered fish and other species.

Feinstein's attempts to reach a compromise with the Central Valley contingent of California's House delegation broke down at the end of last year, but work is ongoing with a bill expected fairly soon, she said in an interview.

"It's something that we're working hot and heavy on and trying to see where we are," she said yesterday.

"There are a number of people I want to sit down and discuss it with before and try to see that we get some wide input into it."

"It's not imminent," she added.

Northern California Democrats had objected to last year's negotiations, in which both chambers passed bills. The Senate held no hearings on Feinstein's legislation, [S. 2198](#), which was considered a short-term solution.

The House bill that passed in February, [H.R. 3964](#), would have gone further, undoing a San Joaquin River restoration program that has been the object of a court settlement and intricate compromises between state and federal officials for decades, as well as capping the delivery of water for environmental purposes, lengthening irrigation contracts and lifting certain environmental protections in area watersheds, among other controversial provisions ([E&E Daily](#), Nov. 20, 2014).

Rep. Ken Calvert (R-Calif.), who co-sponsored another bill, [H.R. 5781](#), that passed the House last month, downplayed the potential effects of last year's legislation.

"It wasn't a plot or conspiracy of any kind," he said in an interview yesterday. "It was just trying to create more flexibility, under the existing biological opinions, to divert stormwater when it's going through." The biological opinions under the Endangered Species Act, which reserve water for fish in the delta during sensitive ecological periods, are a prime target for water contractors in the central and southern parts of the state, who have so far failed to overturn them in the courts ([E&ENews PM](#), Dec. 22, 2014).

Calvert said he hasn't seen a new bill from Feinstein yet. "I know she's worked hard on it, and I'm looking forward to working with our colleagues here in the House to do a bill and eventually getting back to conference again and trying to work out a solution that we can get enough support to pass," he said.

One of the most ardent foes of the legislation, Rep. George Miller (D-Calif.), has retired. And with the Senate now under Republican control, it would seem easier than ever to bypass Democratic opposition. But Calvert hedged when asked if the new Congress would improve the drought legislation's chances.

"Water is water. It has no partisan divide," he said. "It's probably one of the more complex issues in the country."

"There's some people you can't come to an agreement with, under any circumstances."

Calvert also said he envisioned more long-term language dealing with water storage, which has proved more popular with Californians on both sides of the aisle.

"In the end, we need more storage," he said. "If you believe that climate change is here, whether it's for whatever reason, then you don't have as much snowpack. So we're going to have to catch that stormwater when it's raining."

"A lot of our friends in the environmental movements have said that they are in favor of storage, and it can be used also for environmental benefits," he said. "Well, let's see where we're at on this, because this is where we're going to have to go, ultimately."

On Tuesday, California Rep. Jim Costa, a Central Valley Democrat who also supported the House bills, said he thought a Senate bill would be out soon, covering "most of those issues that we had agreed on" last year.

"There certainly are enough votes in the House to pass it, and Senator Feinstein's the best judge to determine whether or not she thinks she can put the votes together in the Senate," he said in an interview in Fresno. "We'll see."

An environmentalist who has been following the debate said she wasn't aware of any talks between Feinstein and wildlife advocates. "If she's broadening out the list of people, I'm not sure who the list is," said Kim Delfino, California program director for Defenders of Wildlife.

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From: Jason Peltier

Sent: Thursday, January 8, 2015 9:22 AM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: E&E Daily: Drought bill negotiations 'hot and heavy' -- Feinstein

E&E Daily

WATER:

Drought bill negotiations 'hot and heavy' -- Feinstein

Debra Kahn and Nick Juliano, E&E reporters

Published: Thursday, January 8, 2015

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From: James Watson

Sent: Thursday, January 8, 2015 10:17 AM

To: TBirmingham@Westlandswater.org; 'Jason Peltier'; 'Dan Pope'; Jose Gutierrez; Sue Ramos; David L. Bernhardt

Subject: End of Year Drought Conditions (Heat Map)

Attachments: CA Weekly Drought Map(2015Jan06)v1.pdf

Attached is an updated comparison of the State's drought conditions (as reported by US Drought Monitor through Jan 06) correlated with CVP & SWP reservoir storage (from DWR through Dec 28). While past performance is no reflection of future conditions, the key take-away is that our service area and the Shasta watershed remain in an extreme or exceptional drought condition for more than 60 and 37 consecutive weeks, respectively.

Jim Watson, PE

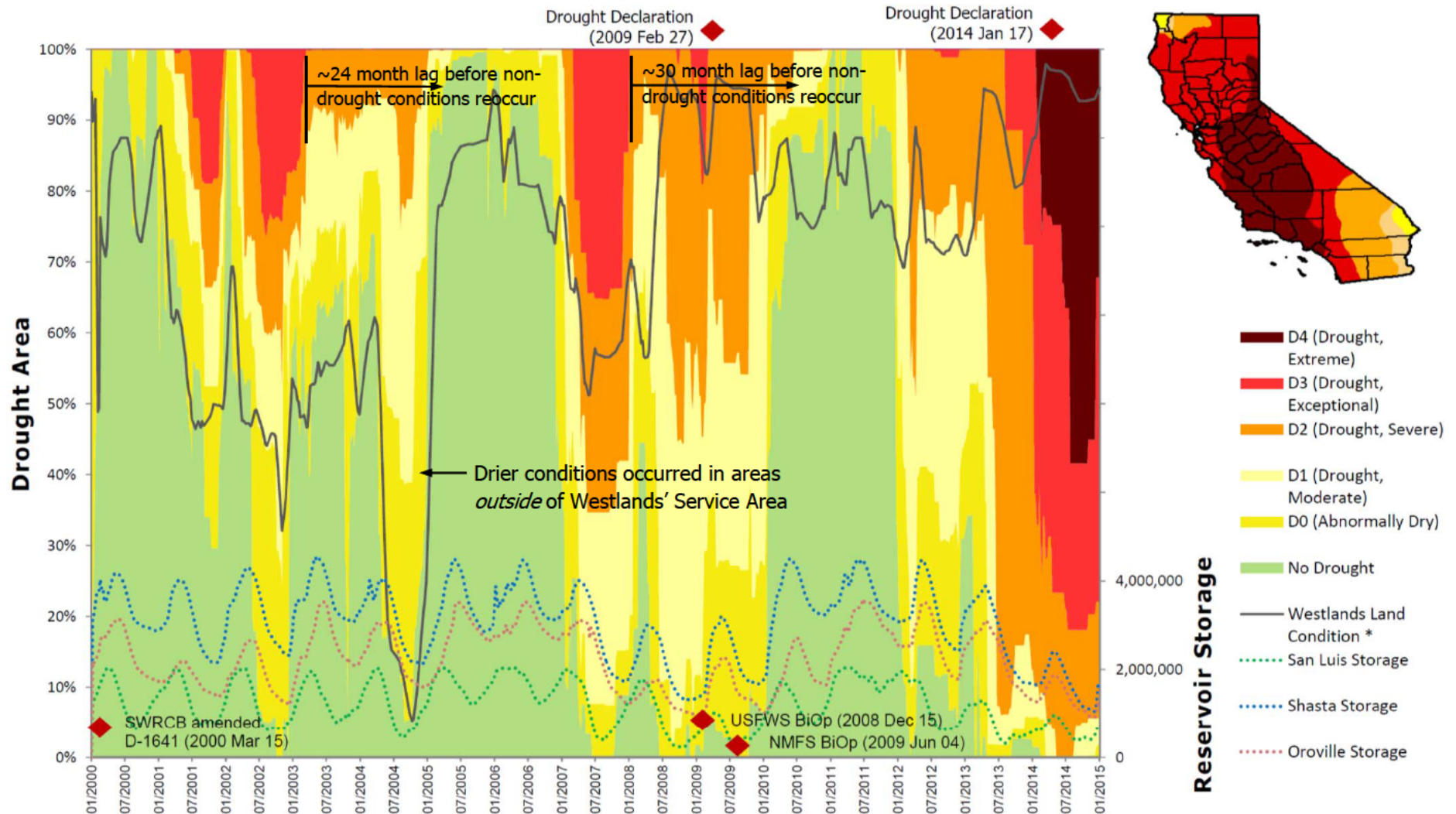
Westlands Water District

Cell: 559.708.8720

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California's Drought Conditions & CVP/SWP Reservoir Storage

2000 Jan through
2015 Jan 6

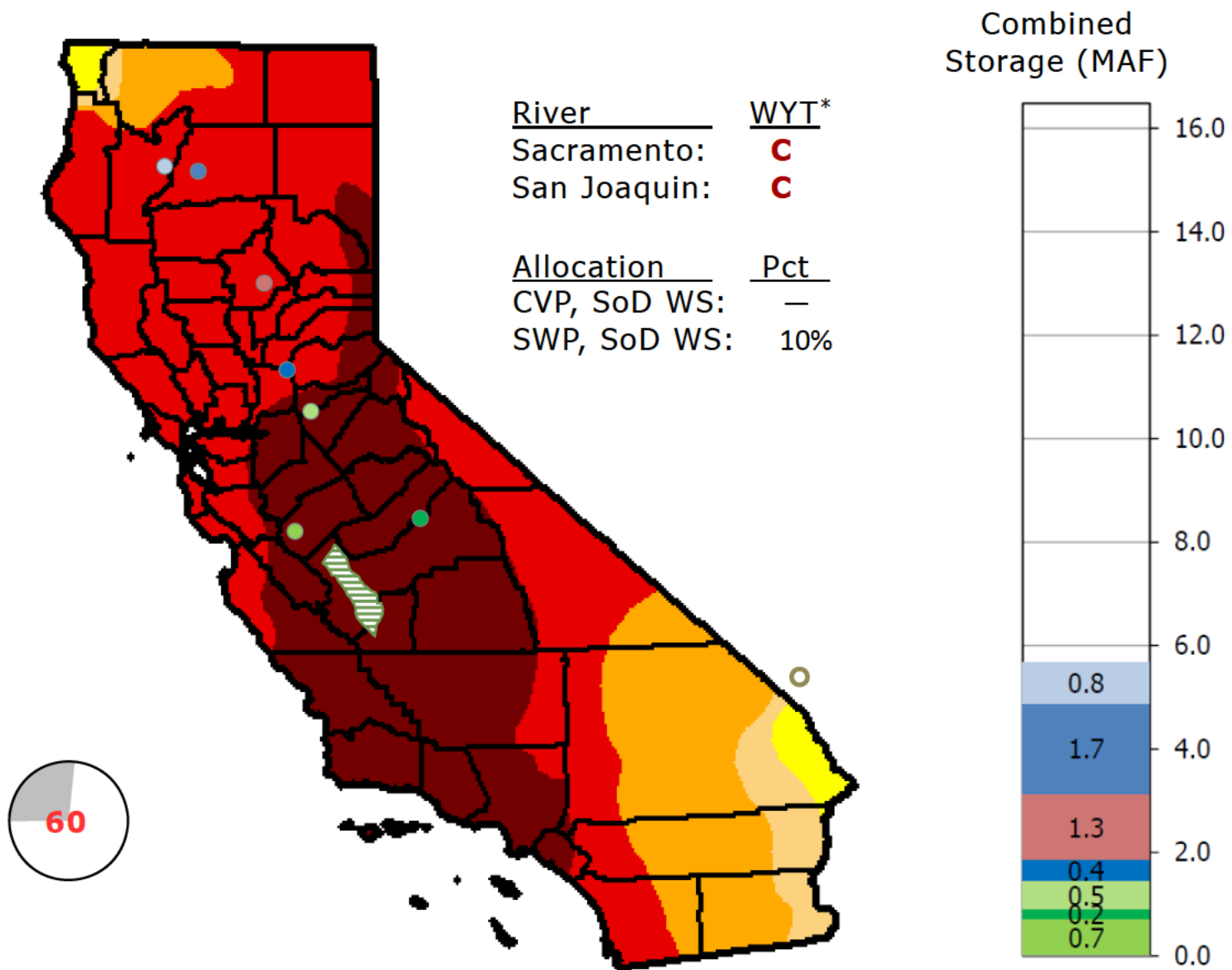


Drought Monitor Categories with Weekly Percent Area in California (as of 2015 Jan 6)

(Statewide Total: 101 million acres. Croplands: 11.4 million acres)

Source: <http://droughtmonitor.unl.edu> & <http://www.statemaster.com>

* Westlands Land Condition is the drought category within Westlands' Service Area relative to the State-level drought categories occurring at the same time (See weekly "heat maps"). An 8-week rolling average is used to smooth out the graph.



2015 Jan 06

From: Jason Peltier

Sent: Sunday, January 11, 2015 8:09 AM

To: Tom Birmingham; Dan Pope; Jose Gutierrez; sramos@westlandswater. org; James Watson; Dennis Cardoza; Joe Findaro; Denny Rehberg; Cathrine Karen; David Bernhardt; Ed Manning; Carolyn Jensen (cjensen@ka-pow. com); Gayle Holman

Subject: San Joaquin Valley farmers reach secret deal in water dispute - SFGate

On drainage settlement.

<http://www.sfgate.com/politics/article/San-Joaquin-Valley-farmers-reach-secret-deal-in-6007151.php>

From: Jason Peltier

Sent: Sunday, January 11, 2015 8:44 AM

To: Joe Findaro; David Bernhardt; Denny Rehberg; Dennis Cardoza

Subject: More House Dems want to limit time at the top - Lauren French and Anna Palmer - POLITICO

<http://www.politico.com/story/2015/01/more-house-dems-want-to-limit-time-at-the-top-114143.html>

From: UberConference

Sent: Wednesday, January 14, 2015 4:27 PM

To: gholman@westlandswater.org

Subject: Conference Invite from Cannon Michael: Water PR Call - 2015 Strategy/Update on Wednesday January 21, 2015 @ 3:00 pm (PST)

Attachments: invite.ics



Cannon Michael has invited you to a conference call:

Water PR Call - 2015 Strategy/Update

January 21, 2015 at 3:00PM (PST)

Ways to Join

Go to: <https://www.uberconference.com/waterpr> or just call 877-████-████. No PIN needed.

Alternate #: 209-████-████

Invited Participants

Tom Barcellos, Erik Hansen, Sarah Woolf, Nancy Williams, Mike Wade, Dan Keppen, Tony Azevedo, David Bernhardt, Clare Foley, Steve Chedester, Mike Henry, Tom Birmingham, Maria Gutierrez, Gayle Holman, Paul Adams, Sean Geivet, Brent Walthall, Ara Azhderian, Loren Booth, Dominic DiMare, Melissa Poole, Ronald Jacobsma, Mario Santoyo, Cannon Michael, Chris White, Daniel Errotabere, Kimberly Brown, James Nickel, Kent Stephens, Dennis Cardoza, Joe Raeder, Dave Puglia, Chris Hurd, Aubrey Bettencourt, Roger Isom, Jennifer T. Buckman, Martin McIntyre, Gawwhitefresno@comcast.net, William Bourdeau, Chase Hurley, Louie Brown, Mark Watte, Shawn Coburn, Dan Nelson, Joel Nelsen, Dennis Nuxoll

Tip: Google Docs add-on

Get to the point quickly by adding the UberConference add-on sidebar to your Google Docs.

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[International access numbers](#)

UberConference

If you'd like to stop getting reminder emails from UberConference, contact Cannon Michael, the organizer.

From: Jason Peltier

Sent: Tuesday, January 20, 2015 8:34 AM

To: Tom Birmingham; Dan Nelson; Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt; Ara Azhderian

Subject: Fwd: NWRA Federal Affairs Action Alert: Drought Legislation Feedback Requested

Begin forwarded message:

From: "Reynolds, David" <dlreyns@sso.org>

Date: January 20, 2015 at 7:28:15 AM PST

To: Jason Peltier <jpeltier@westlandswater.org>

Cc: Greg Zlotnick <greg.zlotnick@sldmwa.org>, AraAzhderian <ara.azhderian@sldmwa.org>

Subject: FW: NWRA Federal Affairs Action Alert: Drought Legislation Feedback Requested

FYI – tight schedule! DR

David L. Reynolds

Director of Federal Relations

Association of California Water Agencies

400 North Capitol St., NW

Washington, DC 20001

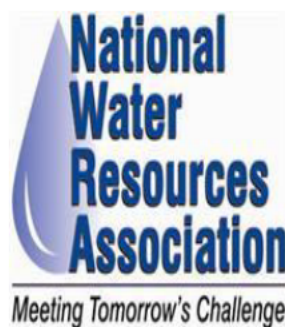
(202)-434-4760

From: Ian Lyle National Water Resources Association [<mailto:ilyle@nwra.org>]

Sent: Monday, January 19, 2015 1:49 PM

To: Reynolds, David

Subject: NWRA Federal Affairs Action Alert: Drought Legislation Feedback Requested



National Water Resources Association

January 19, 2015

MEMO

To: NWRA Federal Affairs Committee

From: Ian Lyle, NWRA Director of Federal Affairs

RE: Senate Drought Legislation

Federal Affairs Committee Members,

At last week's NWRA Leadership Conference we received an update from Senate committee staff indicating that efforts are underway to develop west wide drought legislation. Staff asked NWRA to provide feedback on what this legislation entails.

This is a great opportunity to provide suggestions on legislation that could benefit water users and help us address many of the challenges created by drought.

We are asking that you consider the water supply challenges that you are familiar with and provide suggestions on how to fix them. These can be large or small items and you are welcome to provide specific legislative language or general suggestions.

Bob Lynch has already gotten the ball rolling and has put together several draft titles that could be worked into a drought bill. Mr. Lynch's language is geared toward the development of an augmentation plan for the Colorado River Basin and plans for groundwater recharge and savings. This language can be found [HERE](#).

Please take a moment and review Mr. Lynch's draft language and please send in your own suggestions. It is our understanding that the Committee is operating under a tight timeline so we are asking for comments and recommendations back by Monday, January 26th.

Thank you to Bob Lynch for his efforts and thank you all in advance for your consideration of these items.

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National Water Resources Association | 4 E Street SE | Washington | DC | 20003

From: Barbara Byrne - NOAA Federal

Sent: Wednesday, January 21, 2015 10:14 AM

To: sean.hayes@noaa.gov; mschiewe@anchorqea.com; chanson@hansonenv.com; Josh Israel (jaisrael@usbr.gov); barbara.byrne@noaa.gov; pat_brandes@fws.gov; sgreene@westlandswater.org; brett.harvey@water.ca.gov; rabuchan@uw.edu; hastings@DeltaCouncil.ca.gov; Fry, Susan M; Rene Henery; Daniel Kratville (Daniel.Kratville@wildlife.ca.gov); meiling.roddam@noaa.gov; rachel.johnson@noaa.gov; Michael Harty

CC: Joe Miller

Subject: Fwd: New journal article that seems relevant to SST

Attachments: Warren et al 2015_River flow on salmon dist_a review.pdf

FYI.

----- Forwarded message -----

From: **Meiling Roddam - NOAA Affiliate** <meiling.roddam@noaa.gov>

Date: Wed, Jan 21, 2015 at 8:27 AM

Subject: New journal article that seems relevant to SST

To: "Barbara.Byrne@noaa.gov" <Barbara.Byrne@noaa.gov>

Found this paper while scanning through journals for new articles. I haven't read through all of it yet, but it seems interesting and generally relevant to SST. See attached.
Enjoy!

--

Barb Byrne

Biologist

NOAA Fisheries West Coast Region

U.S. Department of Commerce

Office: 916-930-5612

barbara.byrne@noaa.gov

California Central Valley Area Office

650 Capitol Mall, Suite 5-100

Sacramento, CA 95814



Find us online

www.westcoast.fisheries.noaa.gov



River flow as a determinant of salmonid distribution and abundance: a review

M. Warren · M. J. Dunbar · C. Smith

Received: 27 July 2013 / Accepted: 2 January 2015
© Springer Science+Business Media Dordrecht 2015

Abstract River flow regime is believed to have a fundamental effect on riverine biota. It influences key aquatic processes, including levels of dissolved oxygen, sediment transport and deposition, water quality and habitat type and distribution. We review the impact of flow on the abundance and distribution of salmonid fishes in the context of developing approaches to regulating, setting and restoring river flow regimes as a means of conserving and managing populations. Flow can have direct impacts on salmonids, both through peak flow resulting in the washout of juveniles, and stranding of all life stages under low flow conditions. Salmonids can also be adversely affected through indirect effects of flow, from impacts on water temperature, dissolved oxygen condition, sediment deposition, and habitat availability. Early life stages, particularly eggs and larvae, appear particularly susceptible to the adverse impacts of flow, since they have a limited capacity for behavioral responses to altered flow conditions. A constraint to conservation and management efforts for salmonids is in selecting river flow targets at the catchment

scale with confidence. Most studies linking flow with salmonid population processes are site specific, and may not be readily transferable to other sites. Despite this uncertainty, the requirement for catchment level flow targets has become critical as pressure on water resources has intensified, at the same time that salmonid populations have declined. Our proposal is that hypothesis-led analyses of broad scale long-term datasets are key to quantifying variability in fish abundance with respect to flow and informing flow modification field experiments. The water industry, conservation organizations, and environmental regulators are charged with collaboratively tackling the question of how to set, manage and restore river flow parameters, within the framework of the emerging science of hydroecology.

Keywords Ecological engineering · Fish · Hydroecology · Management · Model · Restoration · Salmon · Trout

M. Warren · C. Smith (✉)
School of Biology, University of St Andrews,
St Andrews, Fife KY16 8LB, UK
e mail: cs101@st andrews.ac.uk

M. Warren
Environment Agency,
Tewkesbury, UK

M. J. Dunbar
Environment Agency,
Reading, UK

Introduction

River flow regimes influence a number of key aquatic processes, including levels of dissolved oxygen, sediment transport and deposition, water quality (through dilution and flushing), and habitat type and distribution (Poff et al. 1997; Richter et al. 1998; Bunn and Arthington 2002). These processes influence the distribution and abundance of biota and flow regimes can thereby directly or indirectly determine the spatial and

temporal distribution of fish (Jowett et al. 2005; Poff and Zimmerman 2010). Human perturbation of flow, either by directly extracting water, regulating rivers using weirs and dams, or indirectly through patterns of land use, may affect fish populations and communities (Freeman et al. 2001; Cattaneo 2005; Park et al. 2006; Benejam et al. 2010). Understanding the relationship between flow and fish abundance and distribution represents a key goal in aquatic ecology and fisheries management, and particularly in attempts to manage, restore and rehabilitate rivers for the benefit of aquatic communities (Richter et al. 2003; Souchon et al. 2008; Poff et al. 2010). Because of their ecological and commercial importance, salmonids have been the chief focus of the debate over flow management (Quinn 2011; Milner et al. 2012).

In recognizing the dominant role of river flow on salmonids an additional consideration is the life-stages affected (Nislow and Armstrong 2012). The direct and indirect effects of river flow will affect different salmonid life-stages in distinct and sometimes contrasting ways (Johnson et al. 1995; Milner et al. 1998; Malcolm et al. 2012; Nislow and Armstrong 2012). The impacts of flow that act strongly on developing eggs (Steen and Quinn 1999) may differ from those impinging on, for example, juveniles (Elliott et al. 1997) or migrating adults (Solomon and Sambrook 2004). Impacts on different life-stages will depend on the timing and duration of low or high flow events (Bischoff and Wolter 2001). High flows may have a profound effect on early life stages, whereas periods of low flow may interrupt the migration of adults. The flow requirements of salmonids have been reviewed (Quinn 2011; Nislow and Armstrong 2012).

The significance of flow for salmonids

The aim of this review is to summarize key scientific studies that demonstrate how river flow can influence the abundance of salmonid fishes, though where relevant, case studies using non-salmonid taxa are also included. A secondary goal is to identify which aspects of flow play the most significant role in shaping salmonid populations, and thereby, how this information might be used in river management, and rehabilitation and restoration of rivers for salmonids. The review focuses on salmonids because the bulk of studies that have addressed this question have concentrated on this family of fishes, a reflection of their economic and

perceived ecological importance. Many salmonids are also of considerable conservation interest (Allendorf and Waples 1996). Migratory salmonids occupy entire river catchments, from headwaters to estuaries, with each life stage having some dependency on the different habitat types potentially makes them particularly sensitive to river flow regime alteration. Salmonids have, consequently, been considered good ecological indicators of the impact of flow regime on ecosystems over a broad range of environmental scales (Milner et al. 2012).

Another feature of salmonid biology that makes them a valuable model in understanding the ecological impact of flow is the plasticity of their life-history traits in response to environmental variability (Rieman and Dunham 2000; Klemetsen et al. 2003). Thus salmonids display wide intra- and interspecific variability in responses to flow variability, with the capacity to adapt to high-gradient upland streams and lowland rivers and estuaries (Beechie et al. 2006; Moore et al. 2012). While this feature of salmonid biology can serve to identify how flow regimes select for specific life-history traits, these adaptive responses also make it difficult to derive generic models of the impacts of flow, with contrasting results generated in different locations (Milner et al. 2012).

Describing river flow

Hydrologists typically use the term ‘flow’ to describe the volume of water that is discharged past a single point on a river. The flow regime of a river comprises flow magnitude, frequency, duration, timing and rate of change (Poff et al. 1997). Various numerical variables are used to describe mean, median, peak and low flow rates so that each of these components of water flow can be estimated (Poff et al. 1997; Shaw 1988). Originally these descriptors were intended for river engineering or water resources management, driven by human population needs, such as flood alleviation or public water supply (Newson 1994). Regulatory changes over time have shifted the emphasis of river and water resources management towards an ecological basis in order to meet the requirements of legislation, such as the EU Habitats Directive (European Commission 1992) and the EU Water Framework Directive (European Commission 2000). Consequently, the term ‘environmental flow’ has entered usage to denote the amount of flow required in a watercourse to maintain a healthy

ecological state (Gibbins et al. 2001; Arthington et al. 2003; Acreman et al. 2008). The introduction of this term is problematic since quantifying ‘environmental flow’ is difficult for complex ecological systems, though it at least encapsulates an important concept. Despite these difficulties environmental flows are widely used to set abstraction limits and reservoir releases in river management and are typically defined in terms of departure from some baseline state, such as the ‘natural’ flow, itself a subjective concept since natural flows will naturally change in response to seasonal and climatic variation (for a full discussion see Poff et al. 1997). If the science and application of environmental flows is to develop, a better quantitative understanding of flow variability and biological response is required (Poff et al. 1997). For this review our goal is to evaluate the evidence for flow induced responses in salmonids, and identify the key aspects of those responses that appear relevant to the setting of environmental flows for salmonid management and as targets for restoration measures. For a recent review of terminology see Milner et al. (2011).

Part of the review outlines the processes that drive river flow so that their different scales and interactions can be placed in context when considering biological responses. This conceptual background is important to those with a biological or ecological background in order to gain some insight into the hydrological disciplines that tend to dominate river and water resources management. Transference can then be made to the rehabilitation of river ecology and restoration of natural features in engineered or degraded rivers. For brevity we employ the term ‘restoration’ to denote both river rehabilitation and restoration measures.

Determinants of river flow

The natural flow regimes of rivers can vary markedly depending on the sources and components of water runoff. Freeze (1972) partitioned the total runoff from a natural catchment into four component parts: channel precipitation, overland flow, interflow (subsurface flow), and groundwater flow (Freeze 1972; Ward 1974). Channel precipitation is that which falls directly onto the river water surface and represents the smallest component, since river surface area will make up only a small percentage of total catchment area. Overland flow is runoff that fails to infiltrate the substrate surface and is

determined by the degree of soil saturation. Interflow occurs when water infiltrates the soil and moves laterally through the upper soil horizons to reach river channels. Precipitation that percolates through soils to the underlying water-bearing strata contributes to the groundwater flow component. Groundwater flow tends to lag behind rainfall events and is important in sustaining river flow during periods of little or no rain. The relative contribution of each of these components will determine the flow regime of a river. When these components are considered alongside other catchment characteristics, such as catchment size, rainfall pattern (spatial and temporal), geology, soil type and topography, an extensive range of river flow regimes will result (Ward 1974; Newson 1994; Poff et al. 1997). For example, upland rivers in northern Europe have a high runoff per unit area due to high rainfall and low evapotranspiration, combined with an impermeable geology, steep gradients and thin soils (Burt 1992; Gilvear et al. 2002). They generally show marked flow peaks and troughs in response to periods of high and low rainfall due to short lag times between rainfall events and changes in river flow (Shaw 1988). In contrast, lowland alluvial rivers will be influenced more by groundwater. As such, these show relatively more consistent and stable patterns of flow due to a damped response to rainfall and sustained flows in dry periods (Shaw 1988). A further contrast is found in regions, such as North America, that experience significant precipitation in the form of snow, where river flow can be dominated by patterns of snowmelt. An assumption is that these varying patterns of flow will select for contrasting salmonid life histories, an assumption that appears to be justified (e.g., Elliott 1995; Beechie et al. 2006).

Approaches to understanding river flow regime need to reflect the regional patterns. In the UK, the Institute of Hydrology developed the Base Flow Index (BFI) as a standard approach to apportioning the total river outflow to baseflow (Newson 1994). The highest BFI scores relate to chalk and other porous limestone catchments, whilst the lowest corresponds to clay-dominated catchments (Table 1). This index provides hydrologists and water resource managers with a comparative guide to identify catchment types that are likely to be prone to low-flow conditions. In the USA, Reidy Liermann et al. (2012) developed a system of classification of rivers with relevance for the Pacific Northwest. Using a Bayesian mixture model they identified seven major classes of flow, a critical first step for setting flow

Table 1 Life stage specific impact of contrasting flow characteristics of salmonids among seasons (modified from Nislow and Armstrong 2012) (NA = not applicable, ? = not known)

Season	Fry		Parr		Smolt	
	Low flow	High flow	Low flow	High flow	Low flow	High flow
Spring	Lower or higher survival	Lower survival	Reduced growth	?	Migratory delay and lower survival	Positive or negative depending on timing
Summer	Reduced growth	Reduced growth	Reduced growth	Increased shelter seeking	NA	NA
Autumn	NA	NA	Reduced growth	?	NA	NA
Winter	NA	NA	Positive or negligible effect on growth	Increased shelter seeking	NA	NA

requirements in the region. At a broader scale, Poff (1996) used the hydrological characteristics of relatively undisturbed rivers across continental USA to derive a river classification scheme that reflected patterns of flow variability among rivers. Attempts at a comparable hydromorphological assessment of European rivers have been less comprehensive (e.g., Raven et al. 2002; Downs and Gregory 2014), though the EU Water Framework Directive now requires a status assessment of all water bodies.

Geomorphology

River flow patterns are dependent on the nature of the catchment through which they flow, which in turn is dictated by the underlying geology and topography and ultimately rainfall, the primary determinant of flow patterns (Helliwell et al. 2007). However, despite having similar controls, in terms of hydrology and geomorphology, river flow patterns may still diverge (Schumm 1985). In addition to pattern diversity, Schumm (1985) noted that rivers also exhibit variation in their stability and resistance to erosion stemming from differences in bank and bed material and hydrological regimes. Nevertheless, the same controls operate at all scales from catchment and whole river at the broadest scale, to river reach at the medium scale, through to small scale processes such as in-channel features and sediment structure (Schumm 1985; Newson and Newson 2000). Geomorphological processes define both channel form and the controls on channel form, which ultimately determine channel change (Environment Agency 1998). The interaction of flow with geomorphology, lithology and valley form are important elements in determining the physical habitat

experienced by the biota living within a river (Poff et al. 1997; Newson and Newson 2000), in particular determining bed scour depth, water velocity and depth, and inter-gravel flow for spawning salmonids and their eggs (Boughton et al. 2009).

Natural constraints on river flow

The four main runoff components to river flow (channel precipitation, overland flow, interflow and groundwater flow) are controlled through variations in climatic and catchment factors and their interaction (Ward 1974; Shaw 1988; Briggs et al. 1997). These controls are generic in that they influence both high and low river flow through their differing temporal and spatial variation and the nature of the interactions (Fig. 1). Low river flows are natural phenomena that are ultimately dependent on a lack of rainfall and limited groundwater inputs. The main processes that sustain river flows in dry weather are storage and discharge from within the catchment consisting of groundwater and subsurface flow, storage in wetlands, lakes or snowmelt (Smakhtin 2001). Patterns of low flows are determined by temporal variation in the magnitude of low flows, its variability, flow depletion and duration, along with spatial variations due to the regional distribution of rainfall, channel morphology, drainage network and catchment altitude and topography (Shaw 1988; Briggs et al. 1997; Smakhtin 2001). In general terms, rivers in catchments with permeable geologies have a greater capacity to sustain river flows than rivers in impermeable catchments.

The processes that determine low flow conditions are similar to those that determine flood flow conditions (Fig. 1). Again, variation in meteorological and terrestrial components will influence flooding seasonality,

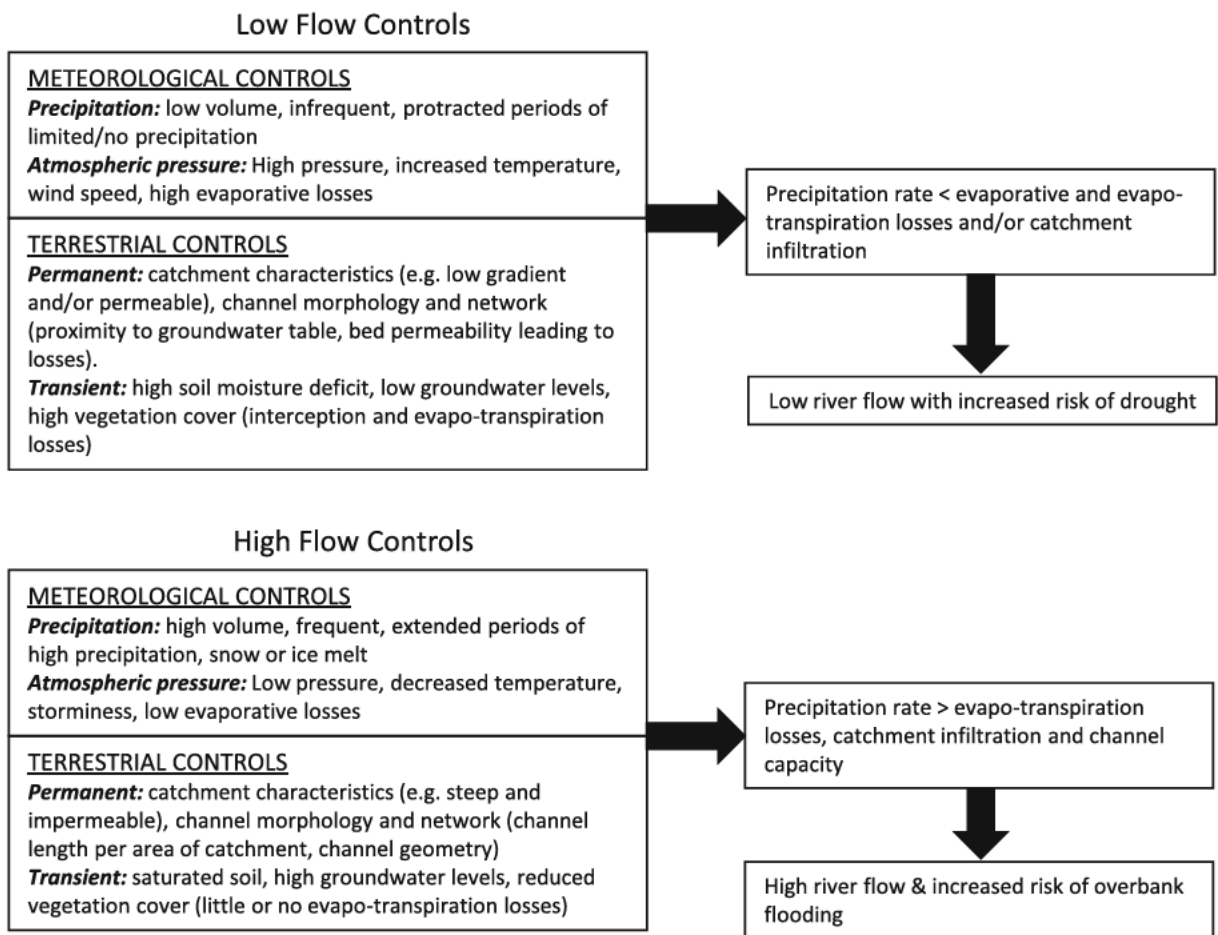


Fig. 1 Identical process controls, but contrasting conditions, leading to either flood flow or low flow in rivers. Modified from Briggs et al. (1997)

frequency, duration and intensity (Ward 1974; Briggs et al. 1997). Flooding tends to have a seasonal pattern, for example, in northern Britain the majority of flood events (>78 %) occur in the winter period between October to March, though they have been recorded at all times of year (Black and Werrity 1997). Although flooding can be seasonal, flood conditions can also occur unpredictably and develop more quickly than low flow conditions, so can be seen as exerting greater influence on riverine communities (Junk et al. 1989; Poff et al. 1997).

Anthropogenic effects on river flow

Globally there are few riverine systems whose flow regime is unaffected by human activities (Ward 1974; Petts 1984; Sala et al. 2000). A range of human activities is capable of affecting rivers both through direct

alteration of river channel habitats or through changes to hydrological and geomorphological processes, which ultimately alter river flow regimes (Poff and Allan 1995). Dams and other hydraulic structures, agricultural and forestry practices, urbanization and water abstraction have the potential to alter river flow regimes and impact on river biota, including salmonid populations.

Water abstraction and impoundments

Impoundments and abstractions can lead to reduced annual and seasonal flow volumes. Groundwater abstractions can reduce the baseflow of rivers that depend upon this component of runoff to sustain flows during periods of low rainfall (Stevens 1999; Weber and Perry 2006). Additionally, headwater streams in high baseflow catchments can dry up, or their sources

migrate downstream, thereby reducing habitat availability for fish and other organisms. The reduction of groundwater flow into rivers can also lead to thermal impacts on biota (Caissie 2006). Salmonids have relatively exacting thermal requirements (Elliott 1995; Wootton 1998), with impacts on survival, growth, movement, migration and emergence (Caissie 2006). In chalk streams in the southern UK, the reduction of relatively cool groundwater is recognized as a potential limiting factor for the survival of salmonids, especially when air and water temperatures are elevated (Solomon and Lightfoot 2008). Similarly, rainbow trout (*Oncorhynchus mykiss*) in streams in Oregon, USA were dependent on cold water refugia created by upwelling groundwater to persist in warmer stream reaches (Ebersole et al. 2001).

Surface water abstraction can also reduce flow over a range of scales, from annual to daily, especially where large public water supply intakes are in operation. Large water intakes or diversions can disrupt the attractant flow for salmonids during downstream migration, leading to the entrapment of individuals and removal of significant numbers from the spawning population (Solomon 1992; Aprahamian and Jones 1997; Turnpenny et al. 1998). Other surface water intakes, for practices such as fish farming and watercress cultivation, tend not to affect the overall water resource budget as they return nearly all the water they use, though they can create river reaches that are depleted of flow and thus present habitat loss and potential barriers to migration for fish (Jones 1990; Casey and Smith 1994; Kelly and Karpinski 1994). Fish farms can also degrade water quality and introduce pathogens to wild fish (Crisp 1993). Reservoir operations can modify extensively the flow regime of rivers downstream, tending to reduce flow variability and aspects of the flow regime that play a role at specific life history stages (Gustard et al. 1987; Magilligan and Nislow 2001; Pavlov et al. 2008). For example, flows that would normally transport fine sediment downstream, helping maintain hydromorphological conditions for biota, can be removed resulting in reduced sedimentation of river reaches below the dam. An outcome is coarsening of the substrate, termed ‘bed armoring’, which limits habitat availability, as well as increasing the risk of ‘downcut’ or channel erosion (Poff et al. 1997; Osmundson et al. 2002; Pulg et al. 2013). Natural low flow conditions can also be elevated by reservoir compensation flows, which may have been set without any ecological basis (Gustard et al. 1987; Acreman and Dunbar 2004). Low flows

may be needed during the period of emergence of larval salmonids to prevent washout and promote growth (Humphries and Lake 2000).

Hydropeaking

Flow regulation and management for activities such as hydropower present fish downstream of the point of water release with a strikingly unnatural environment in terms of flow regime. The rapid increase in flows from dam releases (hydropeaking) are non-seasonal, frequent, of high magnitude and have varied duration (Lucas and Baras 2001). Water released from dams may be at a lower or higher temperature than the river into which they are released. In some cases released water may be depleted in oxygen, in other cases supersaturated (Lucas and Baras 2001).

The impact of hydropeaking may vary among species and river types. Scruton et al. (2003) detected species-specific behavioral responses in salmonids. Atlantic salmon (*Salmo salar*) showed two distinct patterns during hydropeaking trials, fish either showed high site fidelity or moved substantial distances in response to water releases. In contrast, brook trout (*Salvelinus fontinalis*) moved more in relation to releases than to stable flows and also moved more at night in both stable and dynamic flow conditions. Valdez et al. (2001) investigated the effects of dam releases on the Colorado River and found little effect on the distribution, abundance or movement of native fish, proposing that the magnitude and duration of releases were insufficient to displace populations on this river. Hydropeaking has also been associated with strandings, with sudden reductions in flow leaving fish isolated in pools or on exposed substrate (Saltveit et al. 2001; Irvine et al. 2009).

Flood risk management

Mitigating flood risk is a major, though not exclusive, source of river engineering works (Smith and Winkley 1996; Petts 2009). Flood risk measures typically involve the straightening and resectioning of river channels to increase conveyance, and gravel removal to lower the riverbed and thereby increase channel capacity (Purseglove 1988). Impediments to flow are also removed. Thus, boulders and woody debris are removed from the river channel, and riparian vegetation is cut back or removed altogether (Brookes et al. 1983;

Harmon et al. 1986). Channelization and river clearance generate structurally simple and hydraulically efficient river channels that facilitate the rapid clearance of water from the floodplain (Brookes 1985; Hodgson and O'Hara 1994). These measures have the effect of intensifying the impact of high flows (Poff et al. 1997; Petts 2009). In addition, the loss of structural complexity and refuge habitats through river modification serve to exacerbate the impact of high flows on fish. Loss of connectivity with the floodplain in particular has the effect of impeding access to low flow conditions, which may be critical spawning habitat or for early life stages (Junk et al. 1989; Poff et al. 1997). The overall impact of flood mitigation activities also tends to alter the ecological function of a river, and thereby fish populations (FAO 1984; Poff et al. 1997; Pretty et al. 2003).

Land use

Riparian land use can influence river flow, primarily through modifying rates of runoff and introducing sediment. A study by Allan et al. (1997) demonstrated that while catchment level patterns of land use predicted runoff and sediment input, local scale land use was uncorrelated. Scale effects of land use have prompted a 'riverscape' approach to management, particularly of salmonids, but also of other fish taxa (Fausch et al. 2002). This approach recognizes that different physical processes that control river flow operate at different spatial scales (Fig. 2).

Direct effects of flow on fish

River flow, either high or low, may have an impact on fish directly and may be felt differently at different life-stages (Nislow and Armstrong 2012). Seasonally high flows and flooding are a dynamic but natural aspect of the character of a river's flow regime and play a critical role in determining the ecological integrity and biological productivity of rivers (Junk et al. 1989; Poff et al. 1997). Periods of low river flow are also natural and often strongly seasonal phenomena that create conditions in the river channel strikingly different to those under high flows. The proportion of high velocity and associated high energy areas are dramatically reduced during periods of low flow, and water depth in these areas tends to be shallow; conditions likely to have an effect directly on the movements and activities of fish

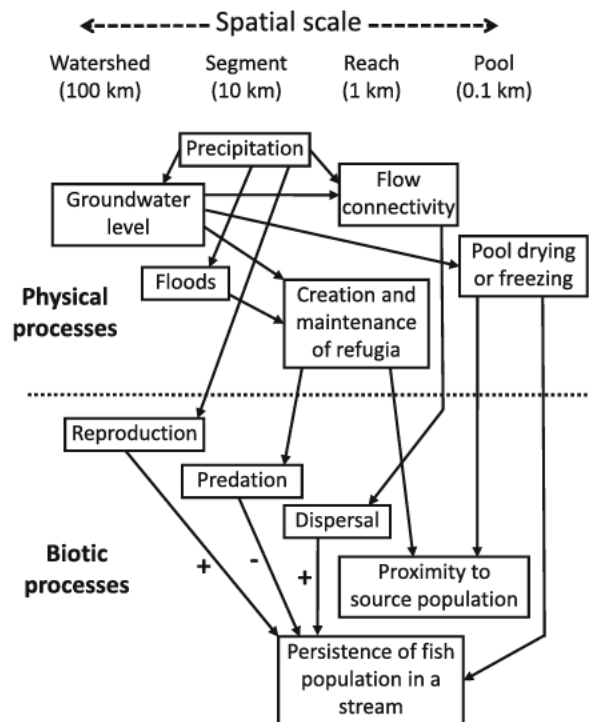


Fig. 2 Conceptual model of physical and biotic processes operating at different spatial scales that influence riverine biota within controls imposed by underlying geology/lithology and geomorphology. Modified from Labbe and Fausch (2000)

(Solomon and Sambrook 2004; Wissmar and Craig 2004; Tetzlaff et al. 2008).

Biotic adaptations to flow

River biota exhibit adaptations to the natural heterogeneity of river systems and many organisms show adaptive resilience to a wide range of flows for example through morphological adaptations (suckers, claws or other mechanisms for holding fast in high flow), reproductive strategies (releasing eggs at particular flow events) and tactics to escape in space and time (migrating to specific locations during particular flow periods) (Lehtinen and Layzer 1988; Southwood 1988; Townsend and Hildrew 1994; Vogel 1994). Flood events may also have the effect of limiting the establishment of invasive species that lack adaptations for high flow conditions (Valdez et al. 2001). A negative impact on fish assemblages may occur when human activity modifies the pattern of river flow so that it deviates from its natural range (Petts 2009). Human activity can alter variation in flow such that the frequency and duration of flood and drought events may be prolonged. In other

circumstances, such as downstream of reservoirs, they may be eliminated altogether.

Effects of high flows

Fish production and growth may be linked to the extent of accessible floodplain (Junk et al. 1989), and nutrient inputs to rivers can be facilitated by high flows flushing adjacent floodplains during periods of high water discharge, thereby enhancing fish productivity (Bowes et al. 2005). In some taxa, spawning is directly related to flood cycles, enhancing reproductive success by creating spawning habitat and nursery areas (Wootton and Smith 2015). However, the type of river channel and its location within a catchment can determine how floods drive productivity and biotic interactions. Low order streams may experience short and unpredictable flood events, with fish and other aquatic organisms having limited adaptations for using the aquatic/terrestrial transitional zone. Conversely more natural channels or higher order streams have a more predictable and longer flood pulse, with aquatic organisms showing adaptive strategies for utilizing the ‘aquatic-terrestrial transition zone’ (Junk et al. 1989) (Fig. 2). Highly modified channels often preclude access to the transition zone. Fish that occupy rivers with prolonged and predictable floods often show adaptations to exploit the presence of seasonal floods and exhibit life history strategies that maximize their reproductive fitness (Langler and Smith 2001; Zeug and Winemiller 2008). Nevertheless, the seasonal timing, magnitude, duration and frequency of flood events will have different effects on the key life stages of fishes (eggs, larvae, juveniles and adult) (Wolter and Sukhodolov 2008; Konečná et al. 2009; Poff and Zimmerman 2010), and these are considered separately.

Fish in the early life stages (unhatched egg, embryo and larvae) have a limited capacity actively to seek out preferred habitats and so depend upon drift to transport them to an optimum environment that maximizes their rate of growth and development, and survival (Wolter and Sukhodolov 2008). However, the timing of drift and the magnitude of displacement will have different optima among species (Reichard and Jurajda 2007; Pavlov et al. 2008). Unusually large and un-seasonal floods may be detrimental to fish populations by transporting early life stages downstream away from optimum habitat (termed ‘washout’) or outside the river channel altogether (Fausch et al. 2001; Wolter and Sukhodolov

2008). Conversely, the absence of natural periodic floods may fail to redistribute early life stages leading to elevated densities and competition (Zitek et al. 2004; Reichard and Jurajda 2007). In some cases flood events may enable early stages to reach floodplain refugia, such as ponds, lakes or ditch systems necessary for them to complete development and/or avoid predation (Sedell et al. 1990; Tockner et al. 2000). In other cases flooding may enable young fishes to migrate down river and recruit to the adult population (Halls and Welcomme 2004).

The early life stages of salmonids appear susceptible to major floods, despite a widespread view that their preferred river types are relatively high flow velocity environments compared with other freshwater fishes (Sukhodolov et al. 2009). During reproduction their eggs are deposited at an optimum depth in river gravels to minimize the risk of wash out, but sufficiently shallow to ensure adequate oxygenation for egg development and permit larval emergence (Crisp 1989; Crisp and Carling 1989). However, extreme floods that mobilize the substrate can damage eggs (Jensen and Johnson 1999), although such floods are relatively rare events. The impact of more regular spates are largely mitigated by the depth of egg deposition (Crisp 1989) and composition and stability of spawning sites, termed ‘redds’ (Beard and Carline 1991). Nevertheless, a degree of high flow is needed to promote flushing of fine sediment from gravels to maximize oxygen supply to eggs and embryos (O’Connor and Andrew 1998; Jensen and Johnson 1999; Levasseur et al. 2006), although if sediment input exceeds the transport and flushing capability of the river then gravel siltation is inevitable (O’Connor and Andrew 1998). In addition to oxygen stress on eggs, fine sediment has the capability to entomb embryos and prevent emergence (O’Connor and Andrew 1998; Jensen and Johnson 1999). The emergence phase is seen as a critical one, with strong density-dependent mortality at this stage, but density independent factors, such as flooding, can also increase mortality substantially (Elliott 2006). An adaptation to compensate for the negative effect of floods is that emergence is timed to coincide with a low probability of flooding (Fausch et al. 2001; Elliott 2006; Lobon-Cervia 2009). Experimental studies have shown that newly emerged salmonids are most sensitive to wash out, though their susceptibility declines over time, corresponding with an increase in body size and swimming ability (Heggenes and Traaen 1988).

Post-larval juveniles and adults possess an enhanced capacity to navigate their way to preferred habitats, and to seek out refuges during peak flows (Wolter and Sukhodolov 2008). This capacity suggests that the impact of flooding is likely to be felt less strongly at these stages, though the duration and magnitude of flooding will determine the impact, with unseasonal and exceptionally high flood events expected to have greatest impact. Jurajda et al. (2006) detected only minor effects on a cyprinid fish assemblage, and no significant change in fish density, in a tributary of the River Danube, immediately before and after exceptional summer floods during which river discharge peaked at 2000 % of the long-term mean. Similarly, the displacement of barbel (*Barbus barbus*) by high summer flows in a UK river was followed by the fish homing back upstream to their former resident areas (Lucas 2000). Notably, autumn displacement was more frequent and homing less frequent, suggesting a seasonal element to the effects of displacement (Lucas 2000).

However, in some cases severe flood events have the potential drastically to reduce fish populations and increase the risk of local extinction. Sato (2009) measured dramatic declines (c. 98 %) in a population of Japanese whitespotted char (*Salvelinus leucomaenis*) inhabiting mountain streams following a severe flood, with no sign of recovery 2 years after the event. In this case, flood flows were so severe that bank-side debris were mobilized, which had the impact of largely eliminating fish at a local scale and significantly changing the structure of the environment. This study highlights how isolated fish populations in lower order upland streams may be at greater risk of extinction from catastrophic flood events because fish are unable to move readily out of the main river channel in the way they often can in unregulated lowland rivers, and goes some way to supporting the flood-pulse concept (Junk et al. 1989). The flood-pulse concept posits that rivers and their floodplains comprise a single ecological and hydrological system with correlated responses to pulses in river discharge. Observations on stream-living marble trout (*Salmo marmoratus*) populations have revealed reductions of between 31 and 78 % following severe flood events prior to spawning, but without long-term consequences to the population. The quick recovery of populations was possible because of a high intrinsic rate of population increase for this species, allowing the small number of reproductive individuals that survived a severe flood to successfully re-establish local populations

(Vincenzi et al. 2008). Studies suggest that salmonid reproductive strategies show compensatory responses for dealing with extreme flows, at least within certain limits, which buffer effects at the population level.

Effects of low flows

In low flow conditions the overall volume of water in the river is substantially decreased, with a concomitant reduction in average depth and width of the river channel, which in turn will result in a net reduction in available habitat. This situation may present fish with the problem of obtaining access to preferred habitats for feeding, and the risk of oxygen stress.

When flow falls to the point that the risk of stranding or isolation become a serious threat fish rely on refugia habitat for survival until flow conditions improve. Refugia include areas of deeper water (Huntingford et al. 1999; Armstrong et al. 2003), which may include disconnected pools (Labbe and Fausch 2000; Magoulick and Kobza 2003). Davey and Kelly (2007) found refugia to be critical in enabling brown trout (*Salmo trutta*) to persist in a river with naturally intermittent flow in its middle reaches. They showed that brown trout (and other species) moved upstream as the stream dried, with sections subject to drying only slowly recolonized. Rates of colonization correlated negatively with increasing distance to refugia and the fish assemblage in sections susceptible to drying were quantitatively and qualitatively different to neighboring reaches. Davey and Kelly's (2007) findings suggest that river systems can exhibit similar ecological processes predicted from island biogeography theory (MacArthur and Wilson 1967), with habitat colonization rates negatively correlated with distance from the source of colonizers. From an applied viewpoint this finding has implications for the way habitat quality and its connectivity along river corridors should be viewed and managed.

Intermittent rivers, those that only flow for some part of the year, are potentially important habitat for juvenile salmonids. In the western USA, intermittent rivers comprise over 65 % of total river length and are a source of both spawning and nursery habitat. In a study of coho salmon (*Oncorhynchus kisutch*), Wigington et al. (2006) showed intermittent rivers to be key sites for the production of smolts, with juveniles able to persist in isolated pools between periods when river flow ceased.

In the case of predictable seasonal reductions in flow, fish may show adaptations that enable them to respond

to the changed conditions, including dispersal (Pires et al. 1999). However, in many cases dispersal may be limited if there is too little water due to channel constriction (Crisp 1989; Armstrong et al. 2003). Under the most extreme low flow conditions a river may comprise nothing more than a series of isolated pools. However, even if the river continues to flow as a discrete water body, the appearance of barriers such as gravel banks and boulders, that would be otherwise submerged, may impede fish movement.

A consequence of reduced low flows, then, will be elevated fish density, particularly if fish are unable to redistribute themselves. At high density fish may face a greater risk of hypoxia and possibly predation, including cannibalism (Smith and Reay 1991). In addition, a number of population processes are density dependent. Thus, feeding and growth may be limited, while mortality rates would tend to increase. The transmission of pathogens is often strongly contingent on host density, especially if transmission is direct. In species that show territoriality or dominance hierarchies, which is frequently the case in salmonids, injuries and mortalities associated with aggression may also increase. The negative effects of low flow will depend on the extent of flow limitation, and also the period over which low flows occur. Elliott et al. (1997) noted that a juvenile year class of brown trout subjected to successive drought periods had lower growth rates and increased mortality, which was strongly linked to reduced densities of returning females. Summer droughts may not affect survival as much as low rainfall in spring and summer, or in summer and autumn, when low stream flows can be prolonged. The effects of low flow may also interact with other variables, notably temperature. Solomon and Lightfoot (2010) found correlations between poor salmon stock performance and reduced August flows, possibly linked to temperature effects on spawning migration. High water temperatures will exacerbate hypoxic effects resulting from low flow (Milner et al. 2003), while low winter flows may increase the risk of fish kills from freezing (Huusko et al. 2007). Notably Sabaton et al. (2008) demonstrated increases in the abundance of adult and juvenile brown trout when flows were restored to streams. Although increases in flow were not large, weighted usable area; i.e., available physical habitat, increased substantially in some rivers, suggesting that the impacts of low flow, and attempts to restore flow to rivers, are likely to be highly variable among rivers.

The negative impacts of low flow on fish may be especially damaging at the population level if they occur during periods of reproduction. Young stages have a limited capacity to avoid stranding, hypoxia or withstand periods of restricted ration (Wootton 1998). However, the hyporheic zone may be utilized by the eggs and larvae of some species, and may not be unduly affected by low flows (Baxter and Hauer 2000), but the risk to salmonids from egg desiccation can be considerable (Crisp et al. 1984; Milner et al. 2003). Furthermore, droughts have been identified as a main cause of severe reductions in the number of YoY salmonids with impacts on population size (Bell et al. 2000; Lobon-Cervia 2009). These studies also demonstrate the resilience of populations where suitable in-channel habitat exists.

Effects of variable flow

While low and high flow rates can have an impact on salmonids, especially if these are of unusual magnitude or are unseasonal, another little understood impact is through increased variability in flow. Evidence from rivers subjected to pulsed water releases associated with hydropower generation (termed ‘hydropeaking’, see above) suggest that highly variable flows have negative effects on salmonids, especially on young stages. For example, Freeman et al. (2001) showed that high flow variability had a negative effect on juvenile fish by undermining habitat persistence. In a study of stream fish assemblages, Poff and Allan (1995) showed that the effect of a high coefficient of variation of flows generated fish communities distinct from those with low flow variation.

Even modest changes in flow can alter the behavior of territorial juvenile salmonids quite substantially. Juvenile salmonids usually rest on the substrate facing upstream under low flow conditions at a specific ‘station’. From this point they collect food items that drift along the riverbed or in the water column and engage in aggressive behavior with neighboring territory holders (Jonsson and Jonsson 2011). As flow increases they leave the substrate and swim more frequently in the water column. Here they can see and encounter neighbors more frequently, with a result that territory size increases, with a concomitant reduction in fish density (Kalleberg 1958; Keenleyside 1962).

In contrast, Heggenes et al. (2007) observed no difference in the home range size of brown trout (*S. trutta*) between channelized and natural river sections, and no

consistent effects of abrupt changes in flow. The direct effects of flow on fish probably depend on local hydrological conditions, with optimal flows likely to be different in different sections of a catchment. Rosenfeld et al. (2007) proposed that habitat suitability for rainbow trout (*O. mykiss*) based on hydraulic geometry changed longitudinally along a river. Thus, optimal conditions for juvenile stages were predicted for smaller upstream sections, while those for larger fish were found downstream. These predicted patterns matched empirical data. A summary of stage-specific responses to flow variability is presented in Tables 1 and 2.

Indirect effects of flow on fish

River morphology

River and water resource management tends to focus solely on the direct impacts of flow (Petts 2009). However, flow is often simply a surrogate for a more complex interaction between channel morphology, water depth and flow that underpins the availability of habitat for river biota (Booker and Graynoth 2008). Changes to river flow regime can result in changes to both habitat quantity and quality at a range of scales. Because fish migrate among different ‘meso’ and ‘micro’ scale habitats there is potential for effects of flow at the population level (Pavlov et al. 2008). Consequently, an understanding of the role of river morphology during different salmonid life stages is important if flow effects are to be understood. Experimental addition and removal of boulders in the Little Southwest Miramichi River by Dolinsek et al. (2007) showed that the presence of

boulders significantly increased juvenile Atlantic salmon (*S. salar*) density, though not of non-salmonid species. The presence of coarse woody debris has also been shown to have a positive effect on juvenile salmonids, primarily by diversifying flow conditions and thereby enhancing feeding opportunities and providing refuges from high flow conditions (Harmon et al. 1986; Roni et al. 2008; Hafs et al. 2014).

Temperature

The energy budgets of fish are driven strongly by water temperature (Rankin and Jensen 1993; Wootton 1998), which is negatively correlated with flow rate (e.g., Webb et al. 2003). Therefore there are potential consequences of reduced or enhanced flow rates for fish bioenergetics, and ultimately on the survival of certain life stages indirectly through their effect on water temperature (Wootton 1998). Water temperature also plays a major role in controlling the upstream migration of some salmonids (Quinn et al. 1997; Moore et al. 2012).

Sediment

The rate of transport of sediment is a function of flow, with the greatest volumes of material transported during flood events (Walling and Webb 1992; Kondolf 1997; Lenzi and Marchi 2000). Land management activities, particularly agriculture but also forestry, mining, road construction, effluent discharge, and urban sources, can all result in elevated sediment inputs to watersheds (Henley et al. 2000; Walling and Webb 1992). Sediment inputs are not wholly rainfall dependent, and so can occur when their impact may be most ecologically

Table 2 Effects of fine sediment on survival of embryonic stage of salmonids

Sediment size/description	Effect	Reference
<0.063 mm 0.5 mm	Reduced survival in egg stage	Julien and Bergeron (2006)
Silts/clays coarse sand		
<0.125 mm	>0.2 % in redds leads to <50 % embryo survival	Levasseur et al. (2006)
Silt and fine sand		
Clay sediment	Thin film on egg surface reduces oxygen exchange across membrane	Greig et al. (2005a, 2005b)
Fine sediment	>15 % fine material in redds deleterious to survival	O'Connor and Andrew (1998)
0.43 0.85 mm	Reduced embryo survival with increased fine sediment. Emergent fry weight also reduced.	Argent and Flebbe (1999)

damaging (Marks and Rutt 1997), though rainfall will ultimately determine the rate and volume of sediment transport into and along the river channel. Catchment and river type can also influence sediment transport and deposition processes (Lenzi and Marchi 2000).

Increased sedimentation and turbidity leads to decreased primary production that can cascade through trophic levels (Osmundson et al. 2002). The avoidance of turbid waters has been observed in juvenile coho salmon *O. kisutch*, arctic grayling *Thymallus arcticus*, and rainbow trout *O. mykiss* (Newcombe and Jensen 1996). The negative effects of suspended particles have been observed on juvenile and adult stages in fishes through gill damage (Berg and Northcote 1985), and reduced feeding rates (Waters 1995; Argent and Flebbe 1999). Perhaps, the biggest impact on salmonid production, though, is likely to come from sedimentation affecting oxygen supply and uptake by eggs (see below). A meta-analysis of the impact of sediment on egg to juvenile survival in four species of Pacific salmon by Jensen et al. (2009) showed coho salmon to be most vulnerable and chum salmon least susceptible, while Chinook salmon and migratory rainbow trout showed intermediate sensitivity.

While the transport of large amounts of sediment resulting in fine sediment intrusion is associated with moderate to high flows (Wood and Armitage 1997), low winter flows at times of low rainfall and icy conditions, can also result in the infiltration of sediment into spawning redds (Levasseur et al. 2006). A consequence is that natural sediment inputs that occur during high flow events can result in less severe ecological effects than at times of low flow (Marks and Rutt 1997). Hence although periods of high rainfall increase the input of sediment to a river, the effects can be partly be mitigated by dilution and mobilization of sediment under high flow conditions while, counterintuitively, low flow conditions can result in siltation of the river channel (Wood and Armitage 1997).

Dams have the effect of removing all but the finest suspended sediment, resulting in sediment-depleted water. A common outcome is increased coarsening or ‘armoring’ of the riverbed, which can limit habitat availability for aquatic invertebrates on which juvenile salmonids feed. Loss of coarse sediment also creates a riverbed that may be unsuitable for spawning by adults (Poff et al. 1997).

Oxygen

Well-oxygenated water is important for all salmonid life stages (Armstrong et al. 2003; Hendry et al. 2003).

Oxygen availability is especially important during egg development, since at this life stage the fish are unable to show a behavioral response to low levels of dissolved oxygen. Fine sediments have multiple impacts on the supply of oxygenated water to developing salmonid eggs and alevins (Crisp 1996; Greig et al. 2005a). Fine sediments can limit interstitial flow velocities, while organic sediment has the effect of depleting dissolved oxygen levels (O’Connor and Andrew 1998; Acomley and Sear 1999; Greig et al. 2005a). Clay particles create low permeability seals on the surface of salmonid eggs, greatly reducing rates of oxygen consumption (Greig et al. 2005b).

Dissolved oxygen concentration and water flow are often correlated, and the relationship between flow and dissolved oxygen availability often confounds links between flow and other variables (Downes 2010). Low summer flows and elevated temperatures in rivers are associated with reductions in dissolved oxygen concentration. These effects occur through reduced oxygen solubility and an elevation in oxygen consuming processes at higher temperatures. At low flow rates water turbulence is also reduced, which limits re-aeration of oxygen-depleted water. Fish growth and activity increase with a rise in temperature to an optimum, at which point they become increasingly constrained by oxygen availability (Jonsson and Jonsson 2009). Reduced oxygen levels can also lead to greater susceptibility to disease (Johnson et al. 2009), and to a reduction in migration into freshwater by salmonids (Solomon and Sambrook 2004).

Pollutants, nutrients, BOD

Water quality can be a limiting variable for salmonid population productivity. Efforts to rehabilitate rivers for salmonids and other fishes may not be fully realized if water quality is limiting (Ormerod 2003). River flow exerts an effect on water chemistry through a dilution effect (Webb and Walling 1992). High flow rates may also mitigate the anoxic effects of organic pollutants. Reduced flow conditions tend to exacerbate the impacts of pollutants (Smakhtin 2001), which can be further aggravated at elevated water temperatures when pollutants tend to have greater toxicity (Alabaster and Lloyd 1982; Mason 2002). Episodic pollution events without adequate dilution, during periods of limited flow, have the greatest impact and can lead to ecosystem degradation (McCahon and Pascoe 1990).

Aquatic and riparian vegetation

Indirect impacts of river flow on salmonids can come through effects on other components of the river community, particularly instream and riparian vegetation. Instream, but particularly riparian tree cover, is important in providing shade and thereby plays a role in water temperature regulation (Eklöv et al. 1999). Vegetation can additionally enhance the production of macroinvertebrates (Gowan and Fausch 2002; Robinson et al. 2002), an important food supply for salmonids that can determine their local distribution (Kawaguchi and Nakano 2001). Coarse woody debris is recognized as an important component of habitat structure. It functions by regulating sediment transport, effects debris and sediment accumulation, and dissipates energy by impeding flow and providing refuges for fish and invertebrates (Van Kirk and Benjamin 2001).

Productivity and bioenergetics

Rate and variance of river flow can influence rate of food delivery to salmonids, primarily in the form of drifting invertebrates that are of either terrestrial or aquatic origin (Kawaguchi and Nakano 2001). The energetic costs of holding station in a river to feed influences fish energy expenditure, as does water temperature, thus the impact of flow can influence salmonids through the structure and balance of their energy budgets. Field studies with salmonids have shown that those in fast currents attain higher food consumption rates than those in slower currents but experience lower growth rates through greater energy expenditure (Tucker and Rasmussen 1999).

Managing river flow

Directly or indirectly river flow can influence different aspects of salmonid life cycles, as well as being important to other river biota. Other reviewers have viewed the evidence base as inconsistent, with scientific testing lacking (Milner et al. 2011), and to a degree this is true. Nevertheless, the current review provides sufficient evidence to implicate river flow as an appropriate variable for ecologically-based river management and restoration, though this approach has rarely been used in practice. Traditionally, river flow management has been the realm of hydrologists and river engineers principally

concerned with reducing flood risk while improving, or at least maintaining, water supply infrastructure (Shaw 1988; Newson 1994). However there has been growing recognition of the importance of setting environmental flows, with over 250 different procedures now employed in at least 20 countries (Dunbar et al. 2012).

How are environmental flows established?

The reviews of Acreman and Dunbar (2004) and Dunbar et al. (2012) summarized the different methods for establishing environmental flows into four main categories; look-up tables, desktop analysis, functional analysis, and hydraulic-habitat modeling (Table 3). These approaches encompass a wide range of scales and situations (Table 3), and both reviews concluded that these approaches should not be viewed in isolation, but should form part of a framework (and continuum of methods) where the application of a methodology is determined by factors such as cost, time, perceived environmental risk, availability of expertise, and scale of assessment (whole system through to single site or species). There is a tendency in setting environmental flows to select some aspect of the natural flow regime, for example mean flow or low flow, as a reference point (Richter et al. 1997, 1998, 2003; Poff et al. 2010). However, little reference is made to the ecological conditions associated with natural flows, possibly due to the confounding effects of other environmental pressures (Bunn and Arthington 2002; Dunbar et al. 2012), and because few river systems worldwide are unaffected by human activity in some way (Richter et al. 1997; Lytle and Poff 2004; Welcomme 2008), which limits the opportunity for identifying the relationship between natural flow conditions and river ecology. Reference condition models, particularly the River Invertebrate Prediction and Classification System (RIVPACS) for macroinvertebrates, go some way to helping establish a reference community (Wright et al. 1998). However, the adequacy of such models within environmental flow setting is questionable where measured at-site variables (river depth, wetted width and substrate composition) are used for biological prediction, as these variables are likely to naturally vary in response to flow (Harrison et al. 2004). Where alternative variables can be used adequately, this may offer some opportunity to develop similar predictive models for fish communities. In the case of salmonids, and perhaps other river ecosystem components, returning to the natural flow regime may be not always

Table 3 Summary of environmental flow setting categories, example methods, scale of application, and type of situation employed. Adapted from Acreman and Dunbar (2004)

Method category	Example [Country]	Scale of application	Situation type
Look up table	Tennant (Montana) method [USA] Texas method [USA] Basque method [Spain]	Catchment	Scoping/planning
Desktop analysis	Range of Variability Approach (RVA) [USA & others] Resource Assessment and Management framework (RAM) [England and Wales]	Catchment/multiple or single sites	Planning/high level impact assessment
Functional analysis	Building Block Method (BBM) [South Africa and others] Expert Panel Assessment Method (EPAM) [Australia]	Multiple or single sites	Impact assessment
Hydraulic habitat modeling	Instream Flow Incremental Method (IFIM)/ Physical Habitat Simulation (PHABSIM) [USA and others] Computer Aided Simulation model for Instream flow Requirements (CASIMIR) [Germany] River Simulation System (RSS) [Norway] Numerical habitat modeling (NHM) [Canada]	Multiple or single sites	Impact assessment River restoration (including flow regime)

be beneficial, especially in rivers where releases from reservoirs have altered flow significantly and populations appear to be benefitting (Milner et al. 2011). Thus, unnatural flow conditions can be envisaged, such as enhanced summer flows, that might significantly enhance survival and growth at critical periods that might otherwise limit population size or productivity (Nislow and Armstrong 2012). A further consideration is the impact of a salmonid population that has been ‘enhanced’ through flow management on ecosystem function. Impacts are potentially detrimental, for example through elevated rates of predation, or might be relatively benign. In the case of lowland rivers in the UK, the majority of which have been highly modified (Brookes 1988), the concept of what ‘natural’ means in the context of river flow regime is equivocal. Elsewhere, natural flow regimes may be less ambiguous (Pettit et al. 2001; Lytle and Poff 2004; Propst and Gido 2004). In situations where natural flow regime may be difficult to define, flow management might be targeted specifically at generating a temporal pattern of flow to create the conditions that maximize salmonid production. The challenge in this case is to identify what those flow conditions are.

Habitat management and restoration

It is widely acknowledged that a range of pressures affect riverine ecosystems, but there is also a view that

given these pressures, it is habitat quality that limits ecosystem function (Ward et al. 2001; Giller 2005). This view has led to efforts aimed at restoring or rehabilitating river habitat, and as a practice has gained in popularity in river and catchment management over several decades (Holmes 1998; Ormerod 2003; Palmer et al. 2005). The underlying principles employed takes account of the interaction between habitat and river flow by focusing on establishing site or reach scale in-channel features to create hydraulic complexity as guided by geomorphological processes (Kemp et al. 2000; Pretty et al. 2003; Harrison et al. 2004; Newson and Large 2006; see Roni et al. 2008 for comprehensive review).

A common in-channel approach to targeting salmonid populations is to focus on the availability and quality of spawning gravels to ensure recruitment conditions are optimal. Spawning habitat rehabilitation is a widely used tool in European rivers in (Brown and Pasternack 2009; Pederson et al. 2009; Vehanen et al. 2010). In North America, while the introduction of gravel in sediment-starved river systems has proven beneficial (Merz et al. 2004, 2005), the practice is not common (Roni et al. 2008). Whilst focusing on ensuring reproductive success makes some sense, efforts in this direction appear to have met with mixed or, in some cases, limited success. Pulg et al. (2013) examined the provision of gravel and its regular cleaning as a mechanism for restoring brown trout populations in regulated rivers. The positive effects appeared to be short-lived, which

suggests that the maintenance of an appropriate flow regime to replenish spawning gravels and keep them free of fine sediment is a more sustainable approach. Salmonid spawning habitat is highly dependent upon the delivery of suitable spawning material from upstream to downstream reaches, and the use of hydraulic models may help determine the discharge required to renew the spawning substrate (Hauer et al. 2011). On balance, simply implementing a minimum flow regime alone as part of attempts at management or restoration is unlikely to rehabilitate salmonid spawning habitat, since the geomorphological processes needed to generate the desired physical habitat could be missing (Brown and Pasternack 2008). In certain situations specific habitat types may be more critical than flow regime. Sukhodolov et al. (2009) showed that braided channels in alpine streams provide refugia for larval and juvenile fish during floods. However, many alpine rivers have lost their braided structure, so restoration of this habitat feature in this instance may represent the priority.

Other categories of river rehabilitation can address riparian rehabilitation, floodplain connectivity, road improvement, and nutrient enrichment (reviewed by Roni et al. 2008). Understanding the ecological benefits of rehabilitation works is important to guiding on-going river habitat management, and poor monitoring programs can be a handicap (Holmes 1998; Hendry et al. 2003; Giller 2005). Pederson et al. (2009) advocated an evaluation of gravel re-introduction for salmonids in Danish streams that acknowledged differences in habitat quality among reaches within a river system. To understand habitat quality in a quantitative manner requires a comprehensive monitoring design (Jähnig et al. 2009). One approach is the use of a Before/After, Control/Impact (BACI) design, but even this approach is not without limitations. For instance, it is a common feature of natural systems for populations at two sites to diverge or converge through time, even without an effect resulting from activities at the ‘impact’ site (Underwood 1991). Vehanen et al. (2010) used the BACI approach 3 years prior and post restoration with an unmodified control. Streambed complexity increased, but no effects on brown trout stocks in rehabilitated areas were detected. Moreover 2+ and older age classes decreased in abundance. A severe drought after the scheme reduced densities of trout to a low level in all streams, overriding any beneficial local effects of rehabilitation. This finding suggests that large-scale regional factors may overwhelm local management efforts, and although suitable

habitat exists, flow stress can severely limit restoration efforts.

River restoration is essentially based on a premise that if habitat conditions are suitable, the biota will respond positively, an approach termed the ‘Field of Dreams hypothesis’; “if you build it, they will come” (Palmer et al. 1997). Despite its obvious weaknesses, this approach is often advocated on the basis that a lack of knowledge in quantifying biological processes should not be a barrier to action. A more rational approach, what has been termed ‘process-based restoration aims’ (Beechie et al. 2010), is to employ habitat restoration and rehabilitation measures alongside the activities of ecologists that have both field and quantitative skills to design restoration measures, implement monitoring protocols and, what has hitherto been a significant omission, to devise appropriate statistical analyses to demonstrate ecological benefits.

What data and information would benefit environmental flow management?

A wide range of approaches to environmental flow setting exist worldwide, supported in part by research and expert opinion (Acreman et al. 2005; Roni et al. 2008; Dunbar et al. 2012; Milner et al. 2012). In the UK, attempts have been made to set environmental standards to meet the EU WFD by defining water abstraction limits to protect river systems and appropriate flow releases from reservoirs. These were established using a combination of site-specific data, expert opinion and stakeholder groups (Acreman and Ferguson 2010). Many empirical studies worldwide have been conducted at a site-specific level, which provides useful detailed information but for only one or a few sites, so their transferability to unknown sites, or to a catchment scale is questionable (Petts 2009; Acreman and Ferguson 2010). Nevertheless widely applicable and generalized models are emerging. For example, Booker and Acreman (2007) analyzed data from 63 PHABSIM studies and found strong relationships between single measures of channel form and river hydraulics and the availability of habitat for target species. Estimates of physical habitat sensitivity to flow change from single measures were comparable with full PHABSIM predictions, albeit with greater uncertainty, though some ambiguity may be acceptable in a more risk-based flow setting framework. The modeling approach by Dunbar

et al. (2010a, b) has also shown a generic biological response to flow change. A macroinvertebrate community index responded positively to low and high flow and interacted significantly with river channel modification whereby less modified sites had overall higher biotic index scores and appeared to be more resilient to flow reduction. This finding has implications for flow management and restoration by indicating the likely direction of ecological change in response to flow and habitat alteration. The value of this approach is that it can be applied to a range of sites where little or no biological data exist. Notably the models of Dunbar et al. (2010a, b) utilized existing river flow, river habitat and macroinvertebrate data, obtained from a well-established monitoring network of the Environment Agency. This approach tallies with the view of Petts (2009) who proposed that models that incorporate long-term data sets are needed so that population level responses can be predicted.

A potential impediment to translating research results into flow management and restoration measures may be because appropriate expertise is fragmented across the disciplines of ecology, hydrology, geomorphology and civil engineering (Vaughan et al. 2009). An understanding of each field is needed to fully interpret results in order to make sound management decisions; a minimum requirement is that the essential ecological and morphological responses are understood in order to select suitable flow management methods (Jowett 1997), and move to ecologically sustainable water management (Richter et al. 2003). However, this situation is changing with the recognition of the potential role of hydraulic-habitat modeling (Dunbar et al. 2012).

Long-term datasets and monitoring

For the management of many ecological systems it is necessary to employ a long-term perspective. Despite the general acceptance of this view, the availability of long-term data to support management remains conspicuously limited (Bayley and Li 1992; Jackson and Füreder 2006). Many studies tend to be undertaken over a 3-year time-scale, chiefly a consequence of the typical length of research funding awards, but long time-series data are considerably more valuable and have substantially helped advance our understanding of the temporal patterns of abundance (Elliott 1995; Magurran 2011). Furthermore, analyses of long-term datasets are more

likely to identify spatial and temporal trends that are key to decision-making, something that short-term studies often fail to detect (Poff et al. 2010; Reidy Liermann et al. 2012). Protocols for detecting ecosystem perturbations require comprehensive time-series data for a suite of key indicators (Richter et al. 1996). For example, long-term studies of freshwater macroinvertebrates have improved our understanding of their inter-annual variation and cycles, biotic and abiotic interactions, and the effects of disturbance and recovery (Jackson and Füreder 2006). It is important to undertake similar studies of long-lived species, such as salmonids, in order to improve our ecological knowledge, develop suitable models (Elliott 1995), and detect long-term effects of human impacts on salmonid productivity (Ugedal et al. 2008). In this regard the environmental regulation bodies are in a unique position to adopt such an approach, and for salmonids they should be able to make best use of existing information from national monitoring programs (Milner et al. 2011), including measures of water quality ideally integrated with management strategies (see Poole et al. 2004 for discussion). Additionally, long-term hydrological datasets are often available for rivers supporting salmonids, and these can provide a detailed history of hydrological change to be considered alongside salmonid and habitat assessment data.

The potential of large datasets has to be considered against the adequacy of monitoring, since current approaches to data collection may be insufficiently specific to permit the confounding effects of autocorrelation between variables to be discerned. This limitation can be overcome to a degree when carrying out hypothesis-led data analyses and model validation, whilst accepting that in some instances monitoring improvements will be needed to ensure they are statistically robust (Milner et al. 2011). However, alterations to monitoring schemes are often viewed unfavorably by organizations that perform these functions; they see it as expensive and potentially render all previous data collection redundant. For salmonids, a parallel approach to the analysis of long-term datasets is needed that uses site-specific studies based upon agreed monitoring protocols so that adequate meta-analyses can be performed (Milner et al. 2011).

Conclusions

The direct and indirect effects of river flow will affect different fish life-stages in distinct ways but responses

appear to be highly variable and attempts to generalize among salmonid species and hydrological regimes has proven problematic. Where river flow has a significant impact on salmonid distribution and abundance, its effects may be imposed over an extended period or over a series of short, but possibly extreme, episodes. Despite these highly variable effects upon salmonid populations, and other river biota, many environmental organizations around the world base their management decisions using relatively simple river discharge values (Acreman et al. 2008). This approach is unsurprising since many have invested significant resources in establishing river flow measurement networks. Additionally, biological monitoring networks have been established, principally in isolation from flow measurement networks, and mainly as a response to industrial pollution and the need to manage water quality. Research to date has shown biological response to flow, but causal links are opaque, possibly due to the correlation between river flow and other environmental variables. Furthermore, other factors that relate to river habitat quality and extent cannot be overlooked. Therefore, although there are developments in continuous simulation models which mean that gauged flows are not always required, the adequacy of the current network of flow and biological monitoring, together with data analysis capability represent a potential bottleneck to rational management measures and attempts at river restoration for salmonids, and should be reviewed and amended where possible.

Given the current paucity of long-term datasets tailored to salmonid management and restoration, there is a need to consider the value of existing datasets. Analyses applied to large datasets for macrophytes and invertebrates have demonstrated a range of periodicities in responses to river flow (Dunbar et al. 2010a, b; Acreman and Dunbar 2011). Furthermore, long-term reductions in flow regime have coincided with reductions in fish populations, though population cycles or trends unrelated to hydrology cannot always be excluded (Bayley and Li 1992; Acreman and Dunbar 2011). Empirical models, exploiting long-term data to reveal generalized relationships between flow, habitat quality and macro-invertebrate communities, have been developed which could potentially be applied to assessing river discharge regimes and informing future water resources management (Dunbar et al. 2010a, b), at least in UK rivers for which these data are available. For salmonids there is a pressing need to develop generalized models of flow and habitat requirements that are transferable between

river systems (Milner et al. 2011) and, possibly, species. In order to improve our understanding, and further develop such models, there is a requirement for empirical testing; possibly via adaptive management studies with a common design to ensure subsequent meta-analyses are statistically robust.

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From: Jason Peltier

Sent: Friday, January 23, 2015 1:14 PM

To: David Bernhardt

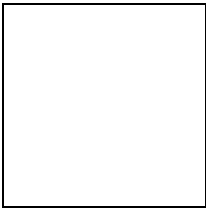
Subject: FW: Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015

From: lyris@swrcb18.waterboards.ca.gov [mailto:lyris@swrcb18.waterboards.ca.gov]

Sent: Friday, January 23, 2015 11:20 AM

To: jason peltier

Subject: Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015



This is a message from the State Water Resources Control Board.

The State Water Board is providing the attached notice to all water right holders of the need to anticipate and plan ahead for the potential curtailment of water rights authorizing diversion and use of water. See: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml

You are currently subscribed to drought_updates as: jpeltier@westlandswater.org.

To unsubscribe click here: leave-3430863-1702239.d5f8f0a3023a48c0716269f9d1e2526a@swrcb18.waterboards.ca.gov

From: Jason Peltier

Sent: Tuesday, January 27, 2015 10:32 AM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'

Subject: Disconnected from reality, as always. But enjoyable.

New rules allow increased killing of Delta smelt as species nears extinction

by Dan Bacher

Monday Jan 26th, 2015 6:50 PM

The decision by the Obama administration to more than double the permissible "take" limit of Delta smelt at the state and federal water export facilities is simply mind-boggling, especially just two days after a California Department of Fish and Wildlife fall survey revealed that the Delta smelt has declined to a record low population level.

"As goes the Delta smelt, so goes the Delta," said Bill Jennings, the executive director of the California Sportfishing Protection Alliance. "The crisis isn't limited to the smelt. All the (Bay/Delta's) pelagic species are in trouble."

The question now is: when is the tipping point for the continued survival of Delta smelt as a species? Has the point of no return already been passed?

When the Delta smelt becomes extinct, Sacramento River winter-run and spring-run Chinook salmon, Central Valley steelhead, green sturgeon, longfin smelt and many other fish species will be sure to follow.

The problem is that neither the Obama and Brown administrations can seem to allow themselves, even in the midst of a record drought, to shut off the pumps even though the state and federal Endangered Species Acts and Clean Water Acts are being openly violated by water exports to corporate agribusiness interests on the west side of the San Joaquin Valley and Southern California water agencies.

Will President Barak Obama become known in history as the "Extinction President" - and will Governor Jerry Brown likewise become known as the "Extinction Governor?"

Photo of Delta smelt by Peter Johnsen, U.S. Fish and Wildlife Service.



800px-delta_smelt_fish_in...

A recent Obama administration decision allows more than twice as many endangered Delta smelt to be killed by giant government pumps than was previously allowed, according to a joint news release from the California Water Impact Network and the California Sportfishing Protection Alliance.

The groups said the policy was adopted days after the annual California Department of Fish and Wildlife (CDFW) population abundance survey confirmed that populations of the tiny, once-abundant fish have crashed to new lows.

Fishery and water policy reform advocates emphasized that the development is about more than the Delta smelt, a small and innocuous fish endemic to the Sacramento/San Joaquin Delta. The smelt is considered a prime indicator species for the health of northern California's Bay/Delta system, the largest estuary on the west coast of the continental United States.

"As goes the Delta smelt, so goes the Delta," said Bill Jennings, the executive director of the California Sportfishing Protection Alliance. "The crisis isn't limited to the smelt. All the (Bay/Delta's) pelagic species are in trouble. This decision by the U.S. Fish and Wildlife Service to unilaterally approve the U.S. Bureau of Reclamation's request to more than double the permissible killing of Delta smelt two days after the Service learned that population abundance of Delta smelt had collapsed to an historical new low is simply reprehensible."

The Delta smelt "take" limit in the present Biological Opinion for the state and federal export pumping facilities, pursuant to the federal Endangered Species Act, is 78 adult fish, according to Jennings.

As of 7 January 2015, the state and federal export pumps had already "taken" 56 Delta smelt and were approaching the limit, which would limit export pumping. On 9 January 2015, the Bureau of Reclamation requested a "Reinitiation of Consultation" of the Biological Opinion with the Fish and Wildlife Service. The Service increased the interim incidental take limit of Delta smelt to 196 adult smelt the same day.

Since 1967, the CDFW has conducted an annual abundance survey of Delta fish populations, which consists of monthly (Sept-Dec) trawls at more than 100 sites throughout the estuary.

On 7 January 2015, CDFW revealed that the population abundance of Delta smelt had fallen to a new record low that was almost half of the previous record low in 2009. Only 8 Delta smelt were collected in more than 400 individual trawls spanning the four months.

Jennings called the decision a "back-room deal" that will allow pumps linked to massive state and federal water projects to kill 25 times the total number of adult smelt than were identified in CDFW surveys between September and December of 2014.

"It's morally indefensible and legally questionable," he said. "It raises the question of whether the Obama Administration is the protector or executioner of an endangered species that was once the most numerous fish in the Delta."

Tom Stokely, a senior water policy analyst for the California Water Impact Network, lambasted the decision.

"This secret accord comes at a time when California Senators Dianne Feinstein and Barbara Boxer are calling for 'science' to guide all negotiations on California's contentious water issues," Stokely said. "This action cannot be justified by available science. It has nothing to do with science, and everything to do with political pressure from powerful interests who want to maintain a stranglehold on our state's public water."

Carolee Krieger, the executive director of the California Water Impact Network, observed that the move evokes the age-old adage of *cui bono* – literally, "to whose benefit?"

"In this case, there is only one beneficiary," Krieger said, "and that's San Joaquin Valley agribusiness. An increased Delta smelt kill translates directly as ongoing, excessive and subsidized water transfers to toxic San Joaquin Valley croplands owned by a handful of politically powerful corporate farmers. I'm outraged by the hypocrisy of the federal agencies responsible for this action. They are not simply ignoring their responsibility of protecting an endangered species and public trust resources. They are actively working against their primary mandate. We expected better from the Obama administration."

The U.S. Fish and Wildlife Service's Memorandum to the Bureau of Reclamation reinitiating consultation for the Central Valley Project Operations Criteria and Plan and Reclamation's request can be found at <http://www.fws.gov/sfbaydelta/cvp-swp/cvp-swp.cfm>

The California Water Impact Network (C-WIN, online at <http://www.c-win.org>) promotes the just and environmentally sustainable use of California's water, including instream flows and groundwater reserves, through research, planning, media outreach, and litigation.

The California Sportfishing Protection Alliance is a non-profit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic and riparian ecosystems. <http://www.calsport.org>

From: Ara Azhderian

Sent: Tuesday, January 27, 2015 10:43 AM

To: Dennis Cardoza; Dave Puglia; David Bernhardt; Joe Findaro; Mike Wade; Dan Keppen

CC: Jason Peltier

Subject: FW: Questions for NMFS,,, if you like

Attachments: 3 Things NMFS Could Do Now to Improve the Fate of Listed Salmonids.docx; Salmon Harvest vs Escapement.pptx

Hi all,

Last week I was asked to describe things NMFS could do in the immediate future to improve the situation for winter-run, with the aim of spreading the protections to minimize the excuses as to why the Projects should remain the sole knob. Attached is what I sent.

Best,
ara

From: Ara Azhderian

Sent: Tuesday, January 27, 2015 9:39 AM

To: Jason Peltier; Terry Erlewine; 'Walthall, Brent'; Curtis Creel; Cindy Kao; Roger Patterson; Brenda Burman; 'Steve Chedester'; Ron Jacobsma

Cc: Dan Nelson (Office); Tom Birmingham (Office)

Subject: FW: Questions for NMFS,,, if you like

From: Ara Azhderian

Sent: Monday, January 26, 2015 11:49 PM

To: 'Yeung, Felix (Feinstein)'; Lombardi, Kyle; Larrabee, Jason; Butler, Jessica; Berenter, Alexandra; Shannon, Caitlin; Plank, Jilian; Petersen, Scott

Subject: Questions for NMFS,,, if you like

Hi all,

I hope you're getting through the DC snow OK. Following up on our conversation of last week, attached are questions that could be posed to NMFS about actions that could be undertaken now to protect listed salmon. Please use as you see fit. Please don't hesitate to call if you should have any questions. Also, plan to get an ops update out tomorrow.

Cheers,
ara

3 Things NMFS Could Do Now to Improve the Fate of Listed Salmonids in 2015

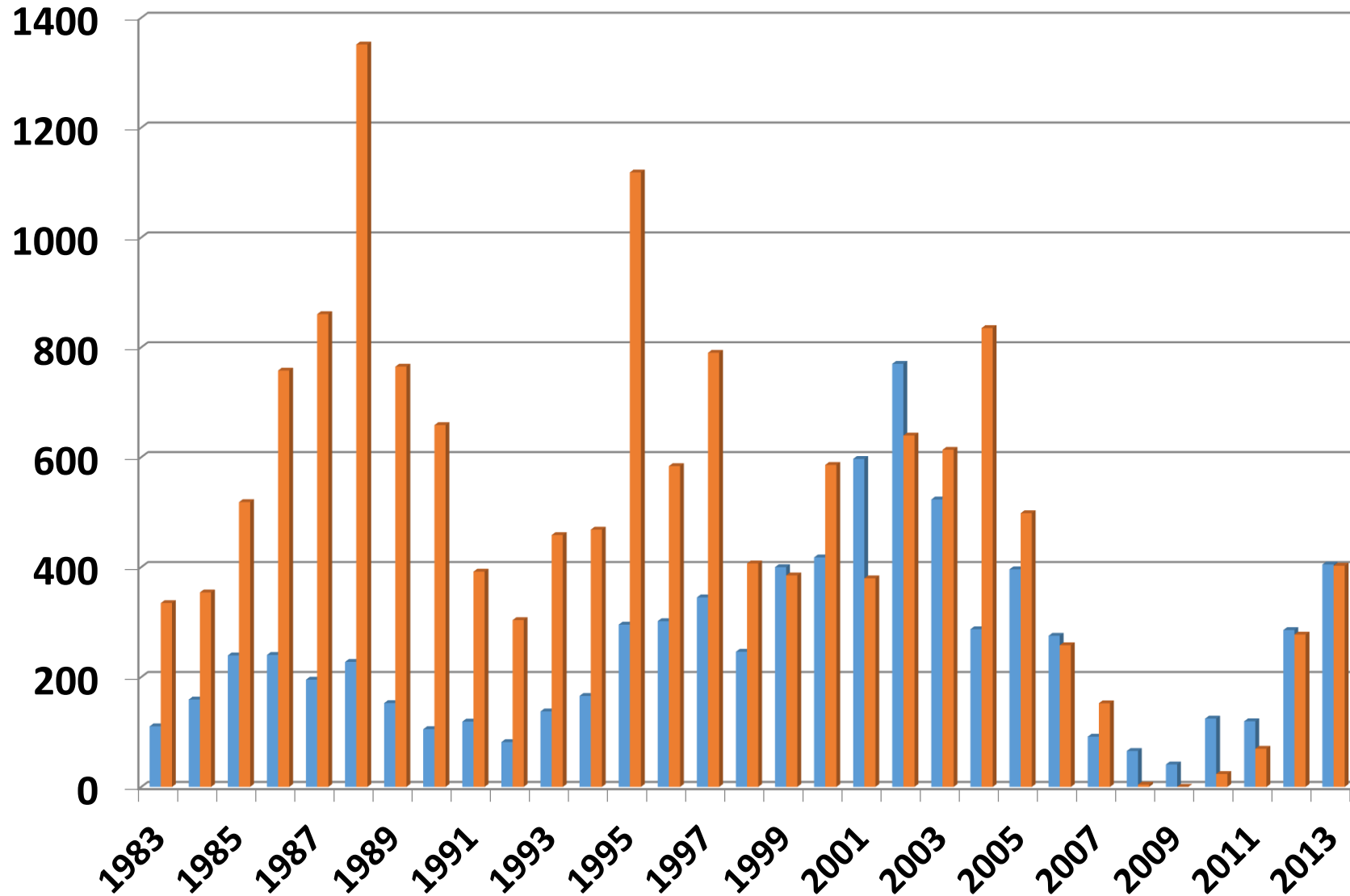
- 1) Improve monitoring in the central and south Delta to provide better information regarding the potential presence of listed salmonids at risk of adverse effects of SWP and CVP export operations. NMFS justifies, in part, its imposition of the calendar based January 1 -5,000 OMR on its estimates of salmon population in the Delta. Currently NMFS estimates 95% of the natural winter-run to be in the Delta and therefore at risk on or before January 1. However, the Delta is about 750,000 acres spanning nearly 1,200 square miles and there is very little information regarding the temporal or geographic distribution of juvenile winter-run Chinook salmon in the Delta. This information is vital. If salmon are in south Delta, then perhaps pumping limitations may do some good but, if they are not, then the limitation protects nothing – water cost without benefit. The best available monitoring data currently indicates few salmonids are present in the south Delta and this is corroborated by the low salvage that has occurred at the State and federal pumping plants. However, NMFS points out the monitoring data is sporadic, both spatially and temporally, and thus uses the absence of information as a reason to impose restrictions arguing an abundance of caution is necessary in the face of uncertainty. This is the same situation that hampered greater operational flexibility in 2014. Rather than allowing the absence of information to drive decision making, we should be doing the exact opposite - doing everything reasonably possible to address the known information gaps, including conducting additional focused fishery monitoring in the Old and Middle River channels leading to the SWP and CVP export facilities that provides the information necessary to make informed management decisions. Current monitoring methods could be enhanced by increasing the frequency and consistency (location and timing) of existing monitoring efforts and by employing new methods. Also, the FWS “early warning” trawls are now only being conducted on a weekly basis; those boats could be employed to increase the salmon monitoring frequency to effectively detect salmonids in the central and south Delta. NMFS opposition to these ideas has been resources, specific technical hurdles (how to interpret the data), and Delta smelt take. All of these hurdles are surmountable.
- 2) Truck winter-run hatchery Chinook salmon to the Delta. In the fall of 2014, NMFS anticipated poor spawning conditions on the Sacramento River and set aside about 3 times more winter-run salmon in the Livingstone hatchery than usual. This was a good, proactive decision by NMFS. Now however, NMFS plans to soon release those hatchery winter-run salmon down the Sacramento River. Studies indicate that migration survival is less than 10% when salmon swim down the Sacramento River. In other words, NMFS plans on allowing more than 90% of those protected winter-run salmon to die during their migration down the river and through the Delta, while imposing restrictions on the Projects aimed at limiting take (another source of mortality) to less than 2%. If indeed survival of the cohort in the face of drought is NMFS’ (and DFW’s) primary concern, the winter-run should be safely trucked to an appropriate location in the Delta. There is an established net pen release site in the Delta, near Jersey Point, where the winter-run could be released in safety and allowed to recover prior to release. When asked, NMFS usually cites two concerns: 1) if salmon are trucked, they lose the opportunity to “imprint” on the water from where they came thereby affecting the ability to return to that stream to spawn, and 2) the fish experience stress when they are trucked, which can also cause mortality. Either of these

conditions, or their combination, results in less mortality than swimming downstream in the Sacramento River. However, there are compromise solutions: 1) to minimize the “imprint” concern, NMFS could truck the two-thirds extra winter-run they reared at the hatchery to a release site located in the Sacramento River immediately downstream of Georgiana Slough (thereby allowing imprinting on Sacramento River water) while releasing the usual one-third as they normally would in to the upper Sacramento River, and 2) by releasing the trucked winter-run into net pens, they could rest for a couple of days, acclimate to the new conditions and imprint on Sacramento River water, recover from the handling and trucking stress, and then be released at night when there is less likelihood of predation. While “imprinting” and stress are legitimate concerns, given NMFS’ (and DFW’s) statements about the magnitude of concern regarding the effects of drought and their fear of losing the entire cohort, the effects of trucking seem reasonable when compared to the known level of mortality that will occur if those fish are forced to swim the predation gauntlet that is the Sacramento River.

- 3) Implement reasonable salmon harvest restrictions. Given the NMFS’ (and DFW) concerns regarding the risk to salmon survival due to drought conditions, implement emergency harvest management regulations that limit salmon harvest to only those fish with an adipose fin clip (hatchery produced salmon). Under current conditions, 25% of all hatchery produced fall-run Chinook salmon are tagged using a coded wire tag (CWT) and adipose fin clip. In 2014, despite all of the expressed concerns about drought affecting salmon survival, no change to harvest management was made and as many salmon were allowed to be killed by commercial and recreational fishing as returned to spawn (escapement). With respect to winter-run, which are intermingled with the unlisted salmon harvested, NMFS allows take of up to 20% of the spawning adult population, as compared to only allowing 2% take of juveniles by the Projects. Limiting harvest of salmon to only marked hatchery salmon would increase the survival of listed winter-run as well as spring-run Chinook salmon.

Sacramento River Fall Run Chinook

■ Spawning Escapement ■ Ocean Harvest



From: Weaver, Kiel
Sent: Tuesday, January 27, 2015 3:17 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Subject: FW: Ranking Member Grijalva Announces Natural Resources Committee Membership, Subcommittee Composition for 114th Congress

From: Varnasidis, Sophia
Sent: Tuesday, January 27, 2015 4:58 PM
To: Republican Staff Natural Resources Cmte
Subject: Ranking Member Grijalva Announces Natural Resources Committee Membership, Subcommittee Composition for 114th Congress

FYI



Ranking Member Grijalva Announces Natural Resources Committee Membership, Subcommittee Composition for 114th Congress

Jan. 27, 2015
Contact: Adam Sarvana
(202) 225-6065 or (202) 578-6626

Washington, D.C. – House Natural Resources Committee Ranking Member Rep. Raúl M. Grijalva today announced the Committee membership and subcommittee composition for the 114th Congress. Gregorio Sablan, the delegate representing the Commonwealth of the Northern Mariana Islands, will serve as Vice Ranking Member.

The Committee is awaiting two additional member assignments from the Democratic Steering and Policy Committee. These lists are subject to updates.

“I am honored that my colleagues have supported me for this important position, and grateful to Ranking Member Grijalva and outgoing Ranking Member Napolitano for their leadership,” said **Rep. Jared Huffman**, the Ranking Member of the Subcommittee on Water, Power and Oceans. “As Ranking Member of the newly created Water, Power, and Oceans Subcommittee, I know we’ll have our work cut out for us to restore fisheries, improve West-wide water supply reliability, and protect our coastline. I have been privileged to work on a number of statewide water successes in my career, and I look forward to tackling the complex natural resource issues that we face in a constructive, problem-solving manner.”

“The Third District of Massachusetts is home to some of the most cherished conservation land and historic areas in New England,” said **Rep. Niki Tsongas**, the Ranking Member of the Subcommittee on Federal Lands. “We have a long-standing practice in the Commonwealth of preserving natural habitats and protecting open spaces for public benefit, and I will draw from that tradition as I take on this leadership role. I am honored to

have earned the respect of my colleagues and look forward to using this opportunity to work across the aisle for the preservation and growth of all the diverse, beautiful and historic lands spread across our great nation.”

“I am honored to be serving as the lead Democrat on the Energy and Mineral Resources Subcommittee, where I will help focus our efforts on renewable energy development, climate change, and the safe and responsible development of resources on our public lands,” said **Rep. Alan Lowenthal**, the Ranking Member of the Subcommittee on Energy and Mineral Resources.

“Our tribes are vital to the fabric of our community and nation, and I am proud to represent eleven tribal nations in California’s 36th district,” said **Rep. Raul Ruiz**, the Ranking Member of the Subcommittee on Indian, Insular and Alaska Native Affairs. “As the Ranking Member of the Subcommittee on Indian, Insular, and Alaska Native Affairs, I will work with my Democratic and Republican colleagues to find real solutions to issues facing our tribes like improving healthcare, education, and economic growth, while vigilantly supporting the sovereignty of all the nations of Indian Country.”

“I look forward to working with my colleagues to ensure government is doing what it is supposed to do to protect our nation’s natural resources,” said **Rep. Debbie Dingell**, the Ranking Member of the Subcommittee on Oversight and Investigations.

Water, Power and Oceans Subcommittee

Jared Huffman, ranking member (Calif.)
Grace Napolitano (Calif.)
Jim Costa (Calif.)
Ruben Gallego (Ariz.)
Madeleine Bordallo (Guam)
Gregorio Sablan (CNMI)
Raul Ruiz (Calif.)
Alan Lowenthal (Calif.)
Norma Torres (Calif.)
Debbie Dingell (Mich.)

Federal Lands Subcommittee

Niki Tsongas, ranking member (Mass.)
Matt Cartwright (Penn.)
Don Beyer (Va.)
Pedro Pierluisi (Puerto Rico)
Jared Huffman (Calif.)
Mark Takai (Hawaii)
Alan Lowenthal (Calif.)
Debbie Dingell (Mich.)

Energy & Mineral Resources Subcommittee

Alan Lowenthal, ranking member (Calif.)
Mark Takai (Hawaii)
Jim Costa (Calif.)
Niki Tsongas (Mass.)
Matt Cartwright (Penn.)
Don Beyer (Va.)
Ruben Gallego (Ariz.)

Indian, Insular and Alaska Native Affairs Subcommittee

Raul Ruiz, ranking member (Calif.)

Madeleine Bordallo (Guam)

Gregorio Sablan (CNMI)

Pedro Pierluisi (Puerto Rico)

Norma Torres (Calif.)

Oversight and Investigations Subcommittee

Debbie Dingell, ranking member (Mich.)

Jared Huffman (Calif.)

Ruben Gallego (Ariz.)

Don Beyer (Va.)

#

From: Bernhardt, David L.

Sent: Tuesday, January 27, 2015 3:24 PM

To: Jean Sagouspe (████@████████████████████ Thomas W. Birmingham (tbirmingham@westlandswater.org)

Subject: Cory is actually in Dirksen B40B.

The meeting with Cory tomorrow is at 8:30 in B40B Dirksen.

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Jason Peltier

Sent: Tuesday, January 27, 2015 5:00 PM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauft'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: D. Feinstein

Feinstein hosts 7 California reps in closed-door water bill talk

By Michael Doyle

Bee Washington Bureau January 27, 2015 Updated 4 hours ago

2015-01-27T19:56:29Z

By Michael Doyle

The never-ending search for a California water bill showed, perhaps, a little progress Tuesday as seven Democratic House members met for over an hour with Democratic Sen. Dianne Feinstein. The late-morning meeting in Feinstein's third-floor Senate office was the first of its kind in the new Congress.

"It was a constructive conversation," said Rep. Jim Costa, D-Fresno.

Exactly how constructive, though, is a matter for speculation, as each of the House members exited the private meeting with their lips effectively sealed. One participant, Rep. Jared Huffman, D-San Rafael, briefly explained the group no-comment by saying that "all of us are interested in building trust."

Feinstein, in a statement, called the meeting "very helpful and productive."

"I am also meeting with individuals and members of a wide range of groups and continue to work on drafting a bill," Feinstein said.

Also participating in the meeting were Northern California Reps. Doris Matsui, John Garamendi, Mike Thompson, Sam Farr and Jerry McNerney.

Read more here: http://www.fresnobee.com/2015/01/27/4350996_feinstein-hosts-7-california-reps.html?rh=1#storylink=cpy

From: Tom Birmingham
Sent: Thursday, January 29, 2015 5:17 AM
To: 'Clark Karen'
CC: 'Bernhardt, David L.'; 'Ed Manning'
Subject: Friday Call

Karen,

Please cancel tomorrow's call. I will be in the air at 7:30 PST and unable to participate.

Tom

From: Karen Clark
Sent: Thursday, January 29, 2015 9:35 AM
To: 'Tom Birmingham'
Subject: RE: Friday Call

Ok

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Thursday, January 29, 2015 4:17 AM
To: 'Clark Karen'
Cc: 'Bernhardt, David L.'; 'Ed Manning'
Subject: Friday Call

Karen,

Please cancel tomorrow's call. I will be in the air at 7:30 PST and unable to participate.

Tom

From: Butler, Jessica
Sent: Thursday, January 29, 2015 12:19 PM
To: Tom Birmingham (tbirmingham@westlandswater.org)
CC: David L. Bernhardt (dbernhardt@bhfs.com)
Subject: do you have a minute to talk - today or tomorrow?

I want to discuss approps priorities for E&W. We're going to meet with committee staff next week and I wanted to get a few ideas down before going in.

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Tom Birmingham
Sent: Thursday, January 29, 2015 1:57 PM
To: Butler, Jessica
CC: David L. Bernhardt (dbernhardt@bhfs.com)
Subject: Re: do you have a minute to talk - today or tomorrow?

I traveling today. Can I call tomorrow at about 12:30 pm your time?

Sent from my iPhone

On Jan 29, 2015, at 12:23 PM, "Butler, Jessica" <Jessica.Butler@mail.house.gov> wrote:

I want to discuss approps priorities for E&W. We're going to meet with committee staff next week and I wanted to get a few ideas down before going in.

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov

<image001.jpg> <image002.png> <image003.jpg>

From: Tom Birmingham
Sent: Friday, January 30, 2015 9:13 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Confidential possible edits to language in redline

John,

I have asked David Bernhardt to join our call at 11:30 EST. Please call (800) [REDACTED] - [REDACTED] pass code [REDACTED] for the call.

Thank you,
Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Friday, January 30, 2015 6:22 AM
To: Tom Birmingham
Cc: Bernhardt, David L.
Subject: Confidential possible edits to language in redline

Tom,

I have confidentially attached possible edits in redline to a couple of sections of our draft language, for discussion on our call at 1130. This is the product of our outreach so far – I suspect there will be other edits as well. This is working off the framework of December's two year/duration of drought bill. I am curious what you think of these edits.

Best,

John

From: Tom Birmingham
Sent: Monday, February 16, 2015 3:59 PM
To: 'Nelson, Damon'; 'Butler, Jessica'
CC: 'Bernhardt, David L.'
Subject: Dinner on March 10

Damon and Jessica,

I will be in DC the week of March 9 for meetings at Interior related to drainage. I have asked Tony to make a reservation at Del Frisco for March 10, at 7:00 p.m. Can you join me? I suspect we will have a lot to discuss. I am hopeful that David Bernhardt will also be able to be there.

Tom

From: Butler, Jessica
Sent: Monday, February 16, 2015 5:09 PM
To: Tom Birmingham
CC: Nelson, Damon; Bernhardt, David L.
Subject: Re: Dinner on March 10

I'm actually going to be in Texas that entire week. I'll be sure and check in with you both afterwards.

Jessica Butler
Legislative Director
Rep. David G. Valadao
202-225-4695

On Feb 16, 2015, at 5:59 PM, "Tom Birmingham" <tbirmingham@westlandswater.org> wrote:

Damon and Jessica,

I will be in DC the week of March 9 for meetings at Interior related to drainage. I have asked Tony to make a reservation at Del Frisco for March 10, at 7:00 p.m. Can you join me? I suspect we will have a lot to discuss. I am hopeful that David Bernhardt will also be able to be there.

Tom

From: Jason Peltier

Sent: Thursday, February 19, 2015 3:33 PM

To: T Birmingham (tbirmingham@westlandswater. org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Summary of 2014 and current conditions

Attachments: dwr_pres18Feb15.pdf

Here is a presentation by DWR from yesterday.

CVP & SWP

Drought Contingency Plan and Temporary Urgent Change Petition

February 18, 2015

DROUGHT PREPAREDNESS & RESPONSE



PUBLIC SAFETY

ENVIRONMENTAL STEWARDSHIP

ECONOMIC STABILITY

Statewide Drought Update

California's Drought

NORMAL

DRY

SEVERE

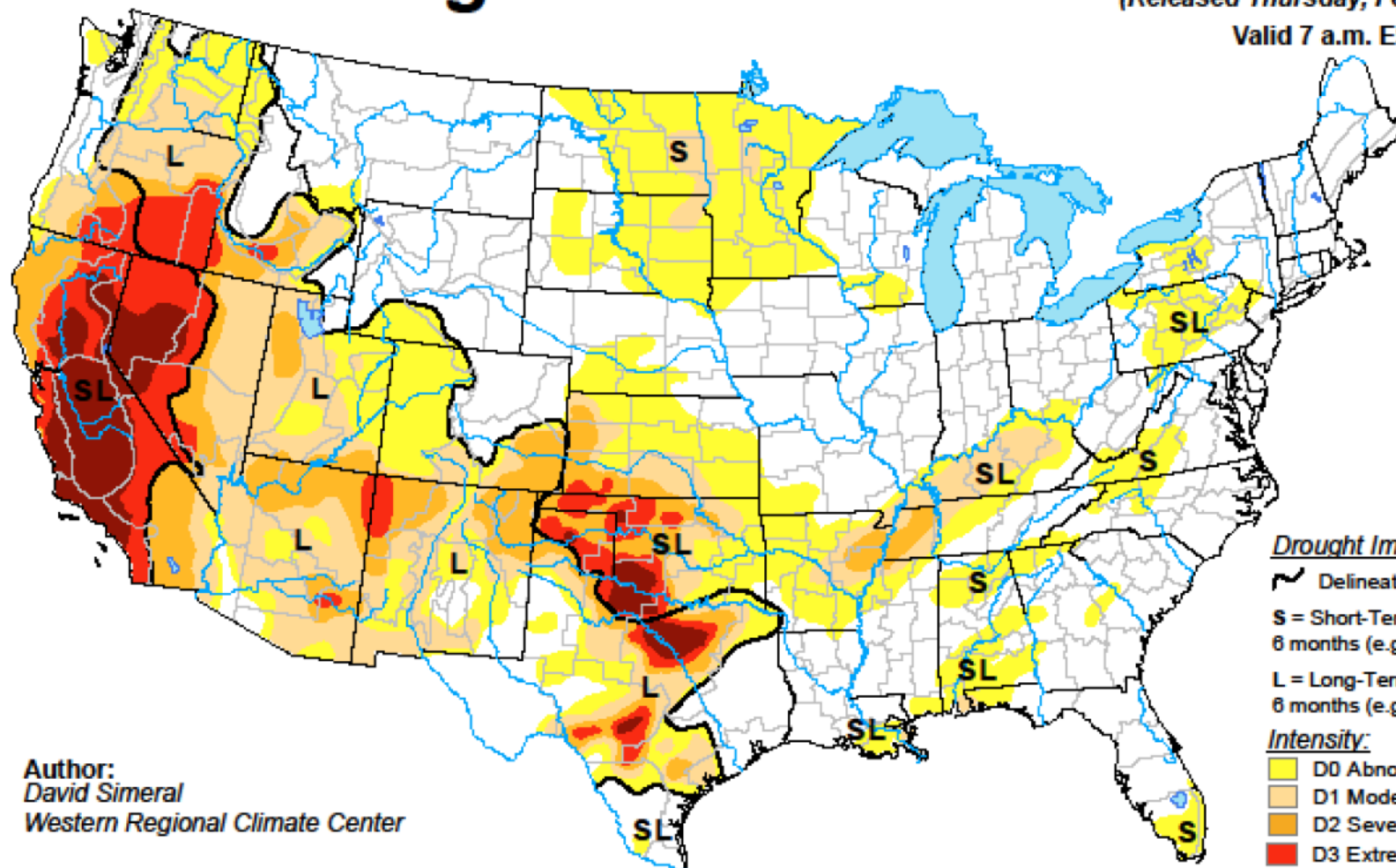
EXTREME

- Governor Declared Drought Emergency
- 2014 - Third dry water year statewide
- 2014 - Warmest year on record
- 2012-2014 - Driest 3 years on record
- January 2015 – Driest in most areas
- 2015 - Warmer and dry
- Statewide storage below average
- Groundwater basins continue to be depleted
- Local conditions are degrading
- High level of local, State and federal coordination

U.S. Drought Monitor

February 10, 2015
(Released Thursday, Feb. 12, 2015)

Valid 7 a.m. EST



Author:
David Simeral
Western Regional Climate Center

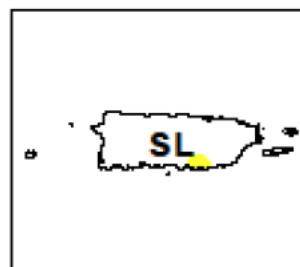
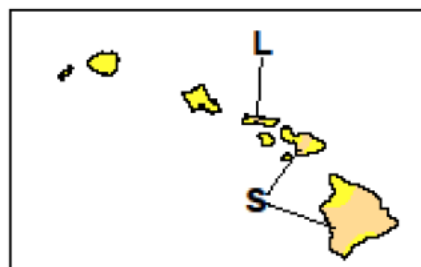
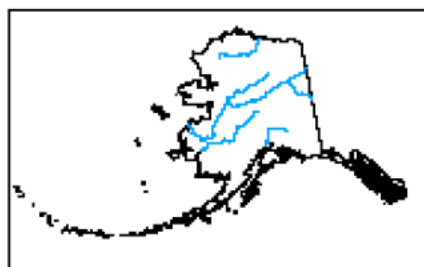
Drought Impact Types:

- ~ Delineates dominant impacts
- S = Short-Term, typically less than 6 months (e.g. agriculture, grasslands)
- L = Long-Term, typically greater than 6 months (e.g. hydrology, ecology)

Intensity:

- Yellow: D0 Abnormally Dry
- Light Orange: D1 Moderate Drought
- Orange: D2 Severe Drought
- Red: D3 Extreme Drought
- Dark Red: D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.



<http://droughtmonitor.unl.edu/>

Statewide Drought Conditions

**Official State of Emergency
Declared on
January 17, 2014**



Local Emergencies Declared



- 25 Counties
- 13 Cities
- 9 Tribal Reservations
- 13 Special Districts

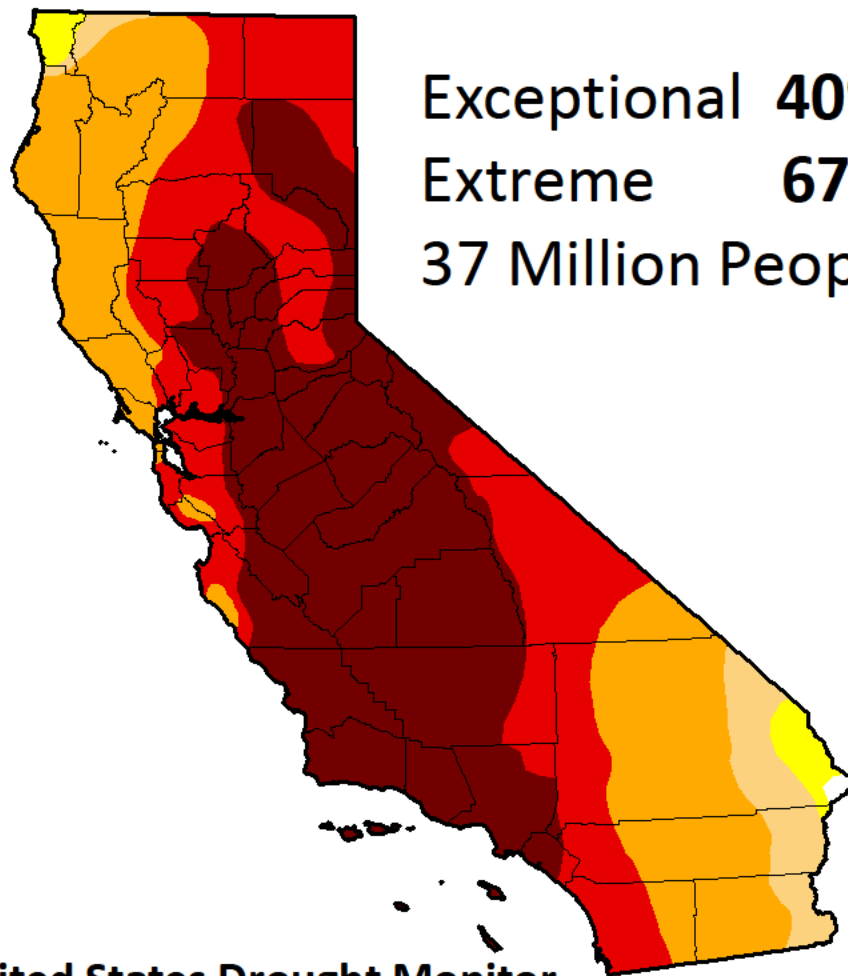
County & Tribal Drought Task Force

- 30 Counties
- 3 Tribes

Intensity:

 D0 - Abnormally Dry
 D1 - Moderate Drought
 D2 - Severe Drought

 D3 - Extreme Drought
 D4 - Exceptional Drought



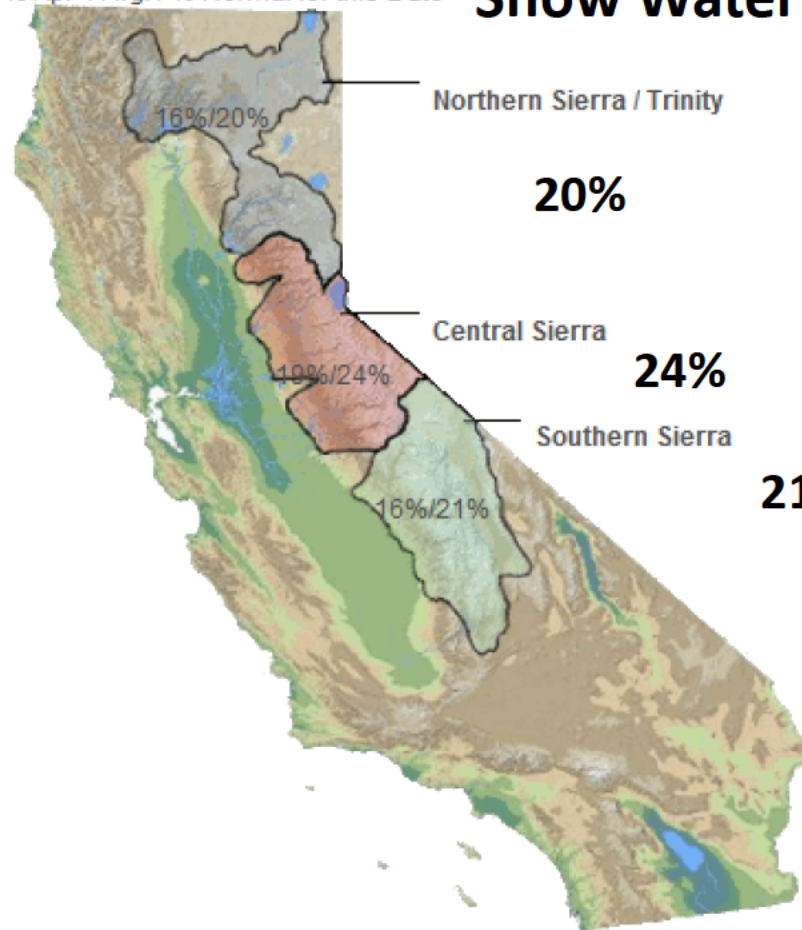
Exceptional **40%**
Extreme **67%**
37 Million People

United States Drought Monitor

February 10, 2015

% Apr 1 Avg. / % Normal for this Date

Snow Water Equivalents



Change Date :



17-Feb-2015

Refresh Data

Statewide

22%

Normal to Date

17%

April 1 Average

NORTH

Data For: 17-Feb-2015

Number of Stations Reporting	29
Average snow water equivalent	4.5"
Percent of April 1 Average	16%
Percent of normal for this date	20%

CENTRAL

Data For: 17-Feb-2015

Number of Stations Reporting	44
Average snow water equivalent	5.8"
Percent of April 1 Average	19%
Percent of normal for this date	24%

SOUTH

Data For: 17-Feb-2015

Number of Stations Reporting	29
Average snow water equivalent	4.4"
Percent of April 1 Average	16%
Percent of normal for this date	21%

STATEWIDE SUMMARY

Data For: 17-Feb-2015

Number of Stations Reporting	102
Average snow water equivalent	5.0"
Percent of April 1 Average	17%
Percent of normal for this date	22%

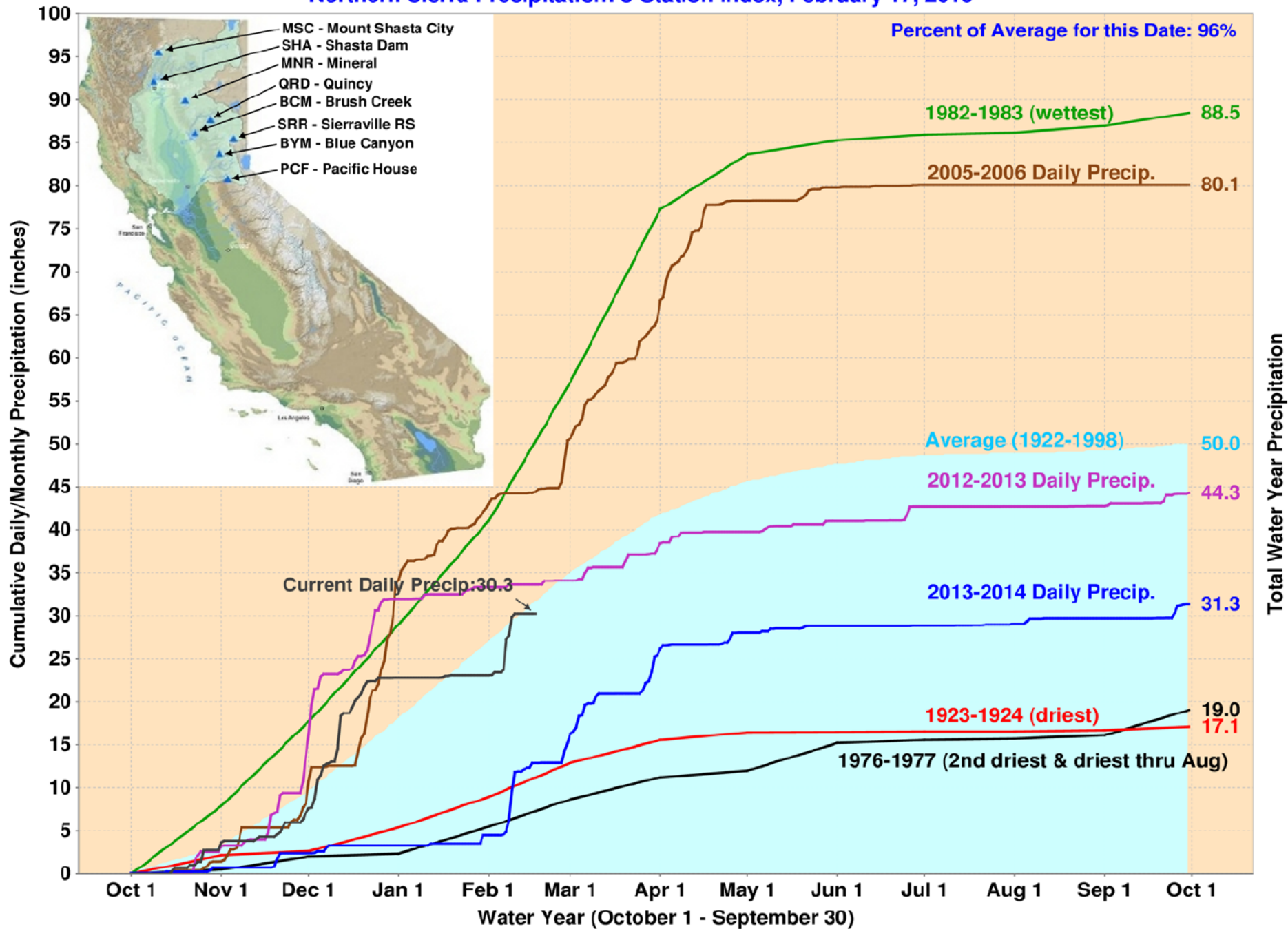
Comparison of Snow Water Equivalents (inches)

2014 vs 2015

Summary By Section			
Section		2/17/2015	2/17/2014
NORTH	Number of Stations Reporting	29	27
	Average snow water equivalent	4"	3.4"
	Percent of April 1 Average	16%	12%
	Percent of normal for this date	20%	15%
CENTRAL	Number of Stations Reporting	44	44
	Average snow water equivalent	6"	7.8"
	Percent of April 1 Average	19%	26%
	Percent of normal for this date	24%	33%
SOUTH	Number of Stations Reporting	29	33
	Average snow water equivalent	4"	4.8"
	Percent of April 1 Average	16%	19%
	Percent of normal for this date	21%	25%
STATEWIDE	Statewide Average SWEQ	5"	5.7"
	Statewide Percent of April 1	17%	20%
	Statewide Percent of Normal	22%	26%

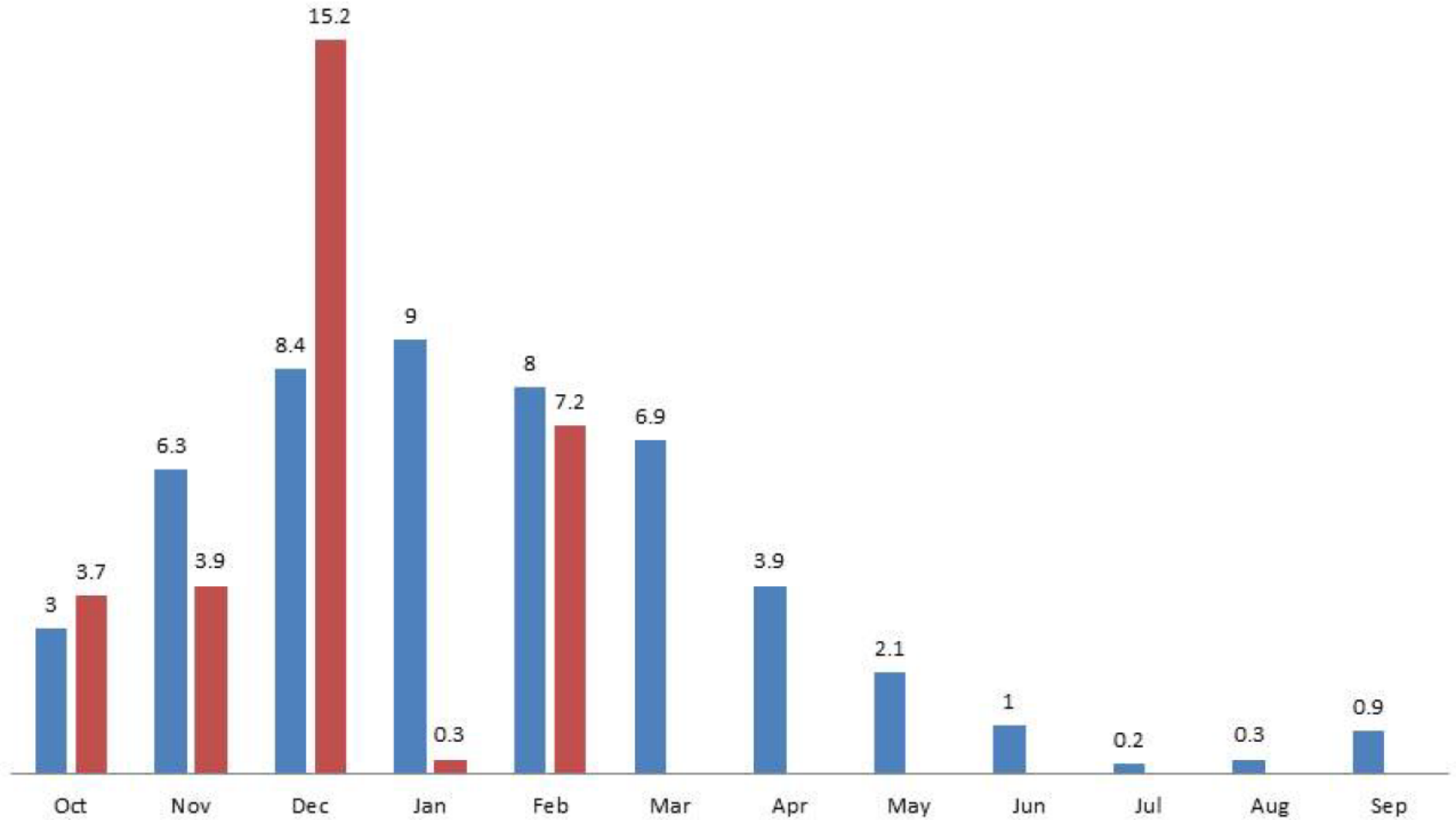
Overview of Current Conditions

Northern Sierra Precipitation: 8-Station Index, February 17, 2015

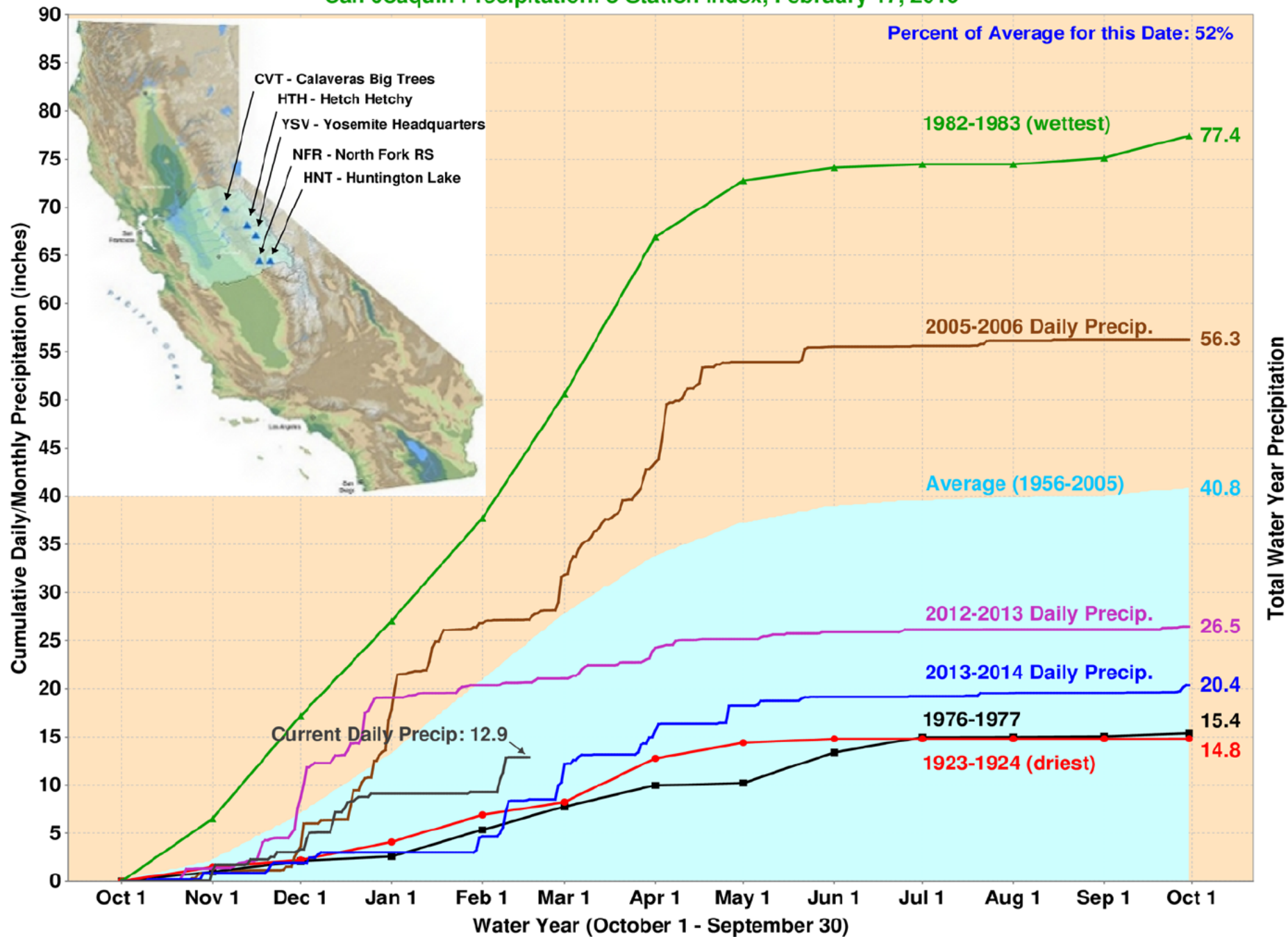


Northern Sierra Eight Station Index

■ 8SI mon avg ■ 8SI WY 14/15

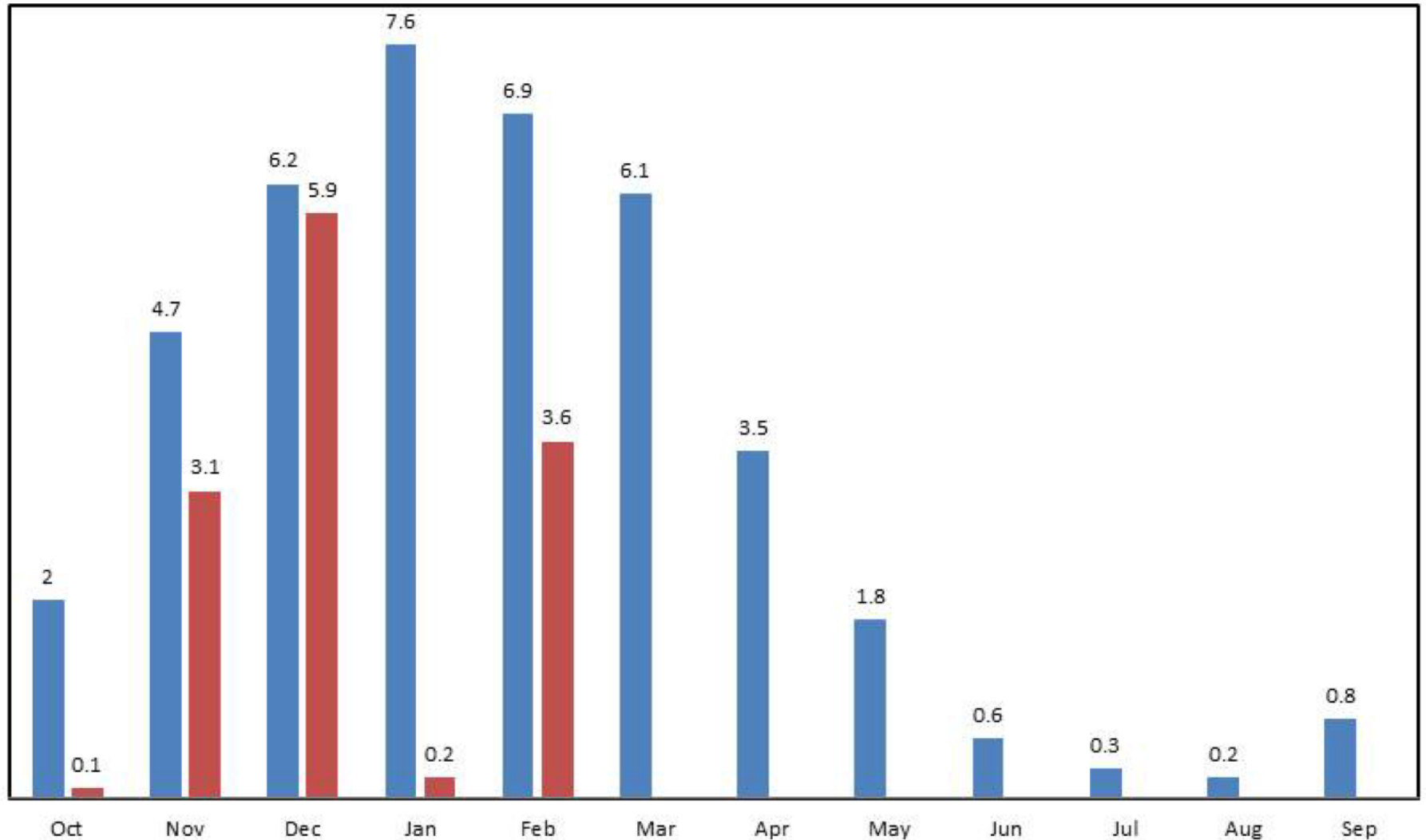


San Joaquin Precipitation: 5-Station Index, February 17, 2015

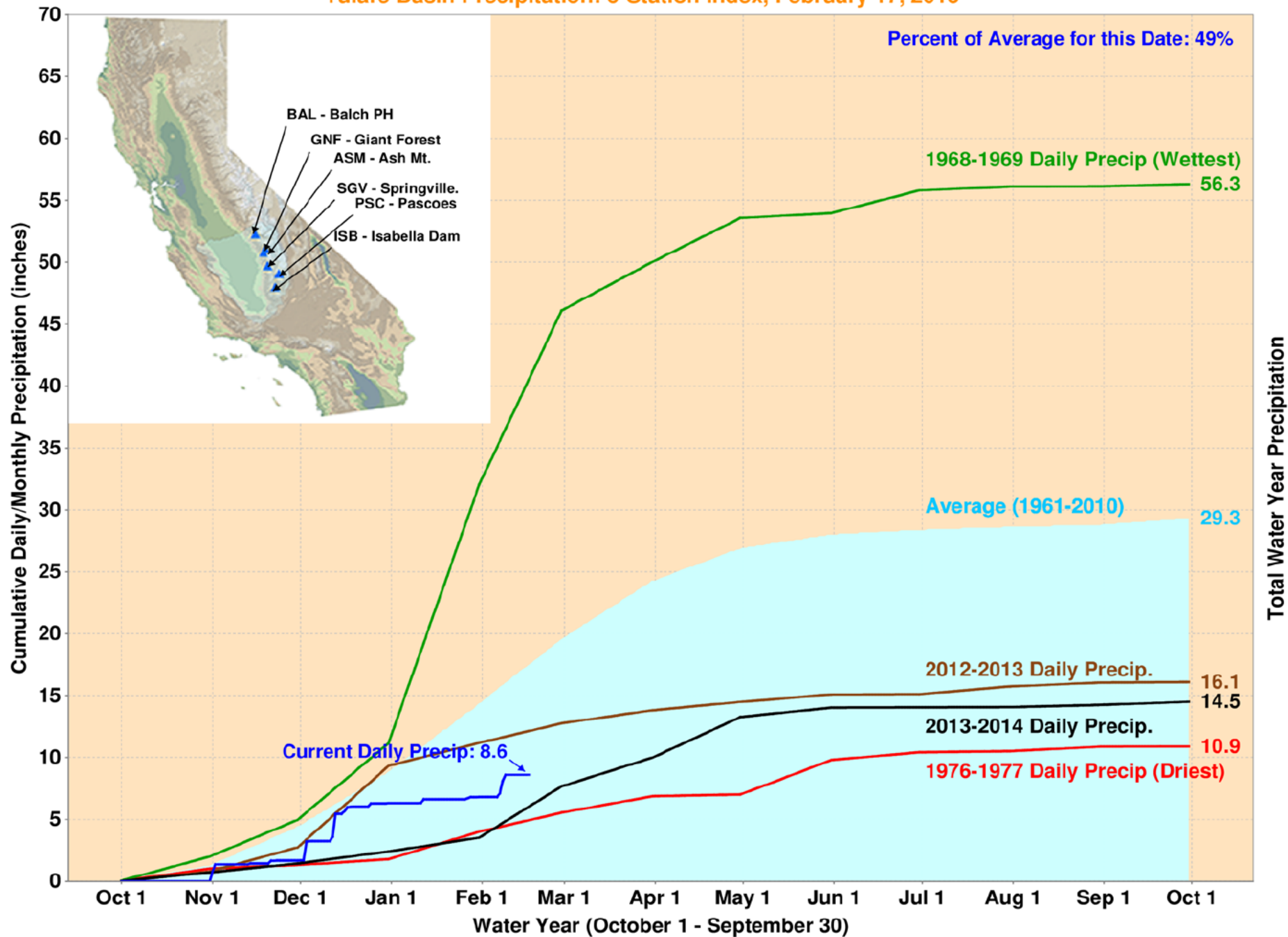


Central Sierra Five Station Index

■ SSI mon avg ■ SSI WY 14/15



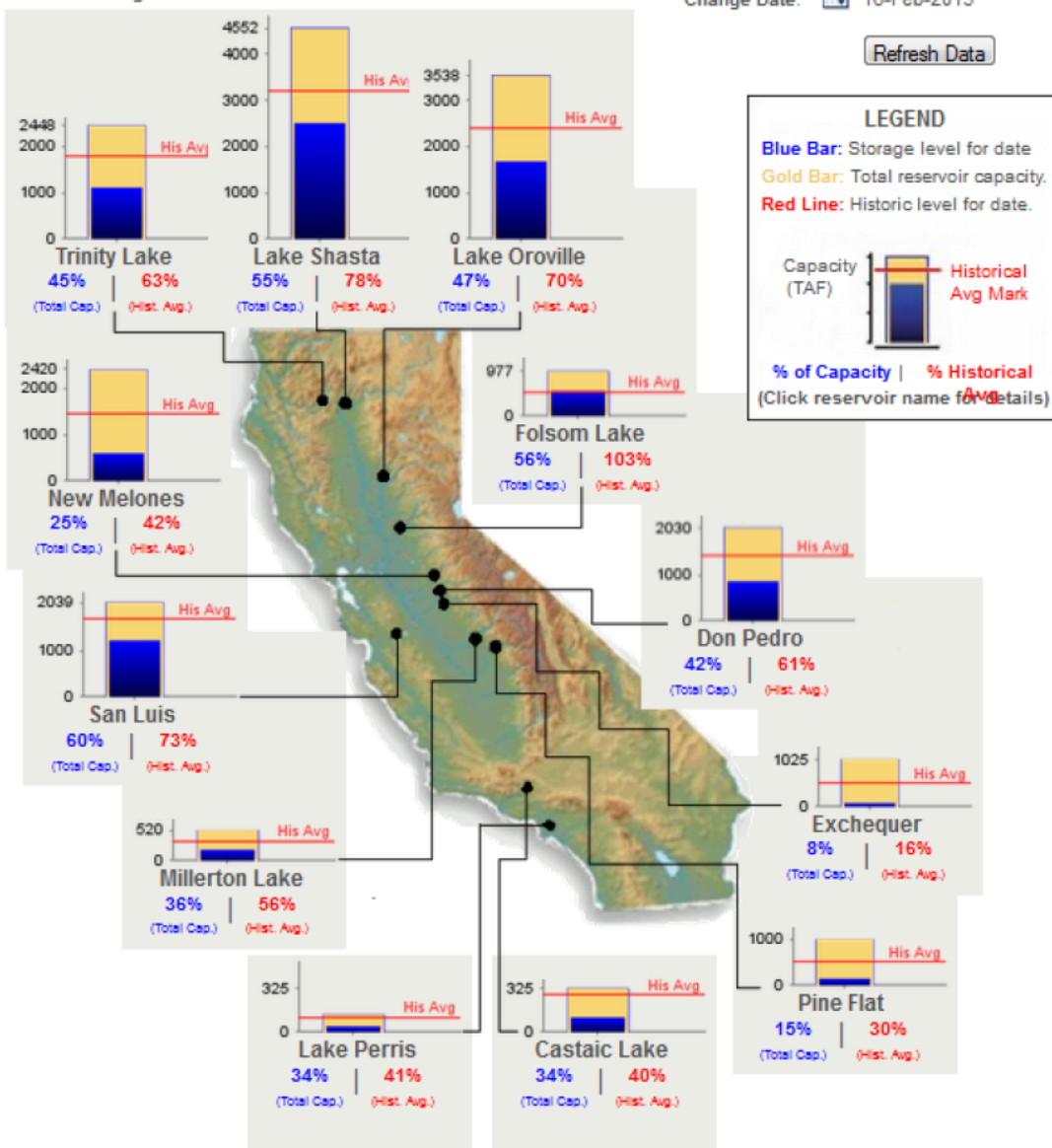
Tulare Basin Precipitation: 6-Station Index, February 17, 2015



Data as of Midnight: 16-Feb-2015

Change Date:  16-Feb-2015

[Refresh Data](#)



	% Cap	% Avg
Trinity	45	63
Shasta	55	78
Oroville	47	70
Folsom	56	103
New Melones	25	42
San Luis	60	73

[Click for printable version of current data.](#)

NOTE: Perris lake has replaced Pyramid lake

Report Generated: 17-Feb-2015 9:12 AM



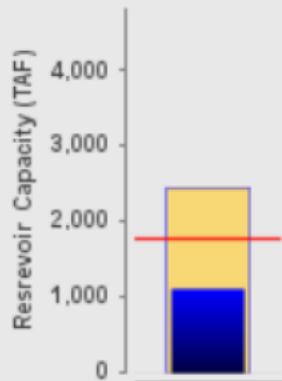
Reservoir Conditions - Trinity Lake



Trinity Lake

Trinity Lake Conditions

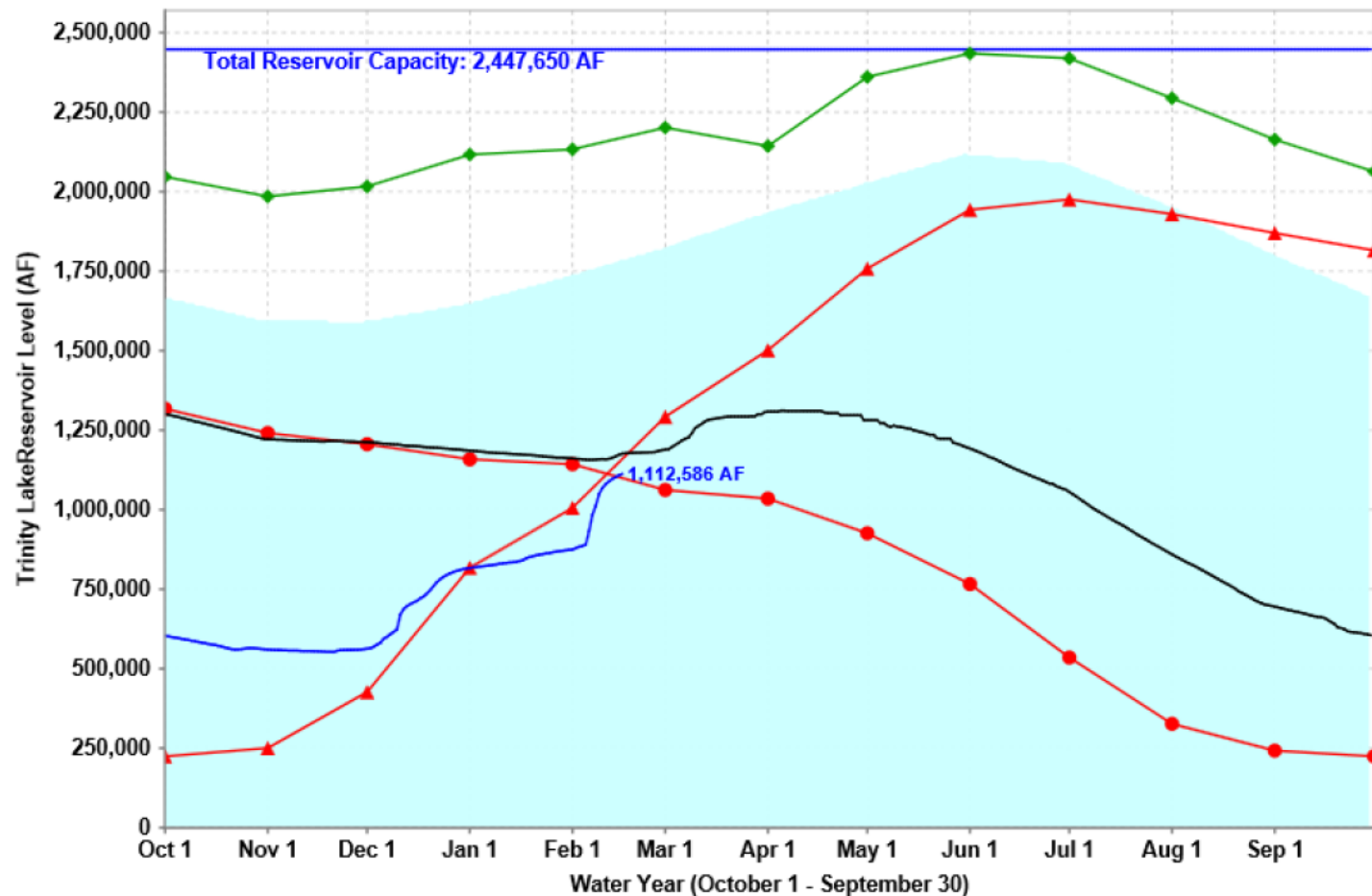
(as of Midnight - February 16, 2015)



Current Level: 1,112,586 AF

45% (Total Capacity) | 63% (Historical Avg.)

Trinity Lake Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average Total Reservoir Capacity 1976-1977 (Driest) 1977-1978 1982-1983 (Wettest) 2013-2014 Current: 2014-2015

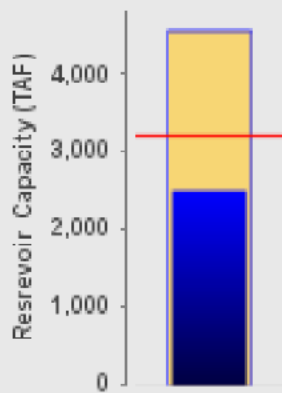


Reservoir Conditions - Shasta Reservoir



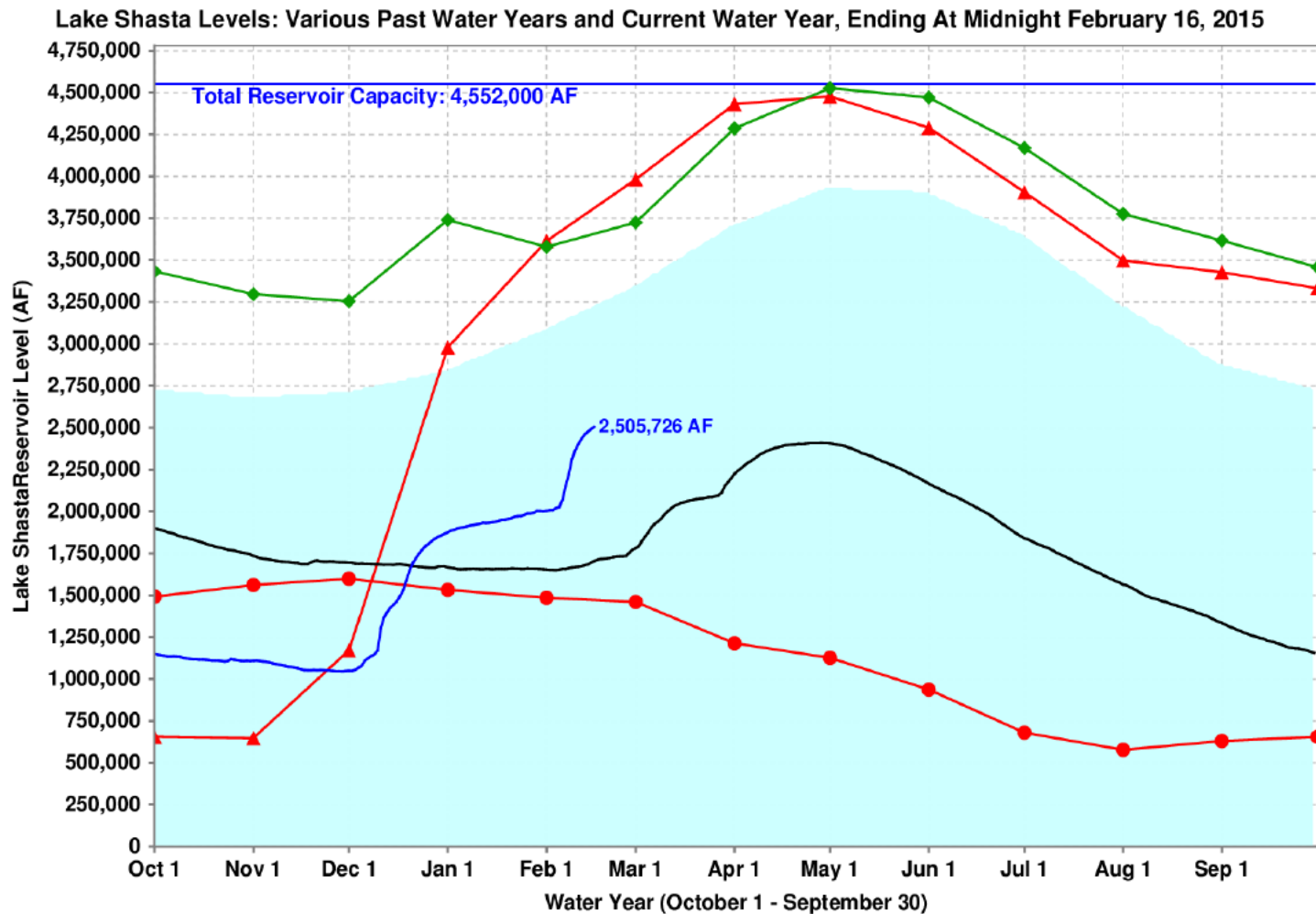
Lake Shasta Conditions

(as of Midnight - February 16, 2015)



Current Level: 2,505,726 AF

55% (Total Capacity) | 78% (Historical Avg.)



Historical Average — Total Reservoir Capacity — 1976-1977 (Driest) — 1977-1978 — 1982-1983 (Wettest) — 2013-2014
— Current: 2014-2015

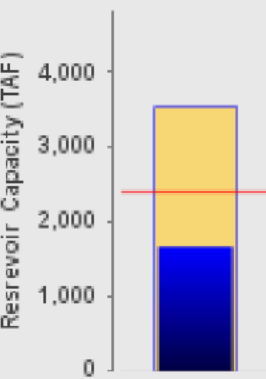


Reservoir Conditions - Lake Oroville



Lake Oroville Conditions

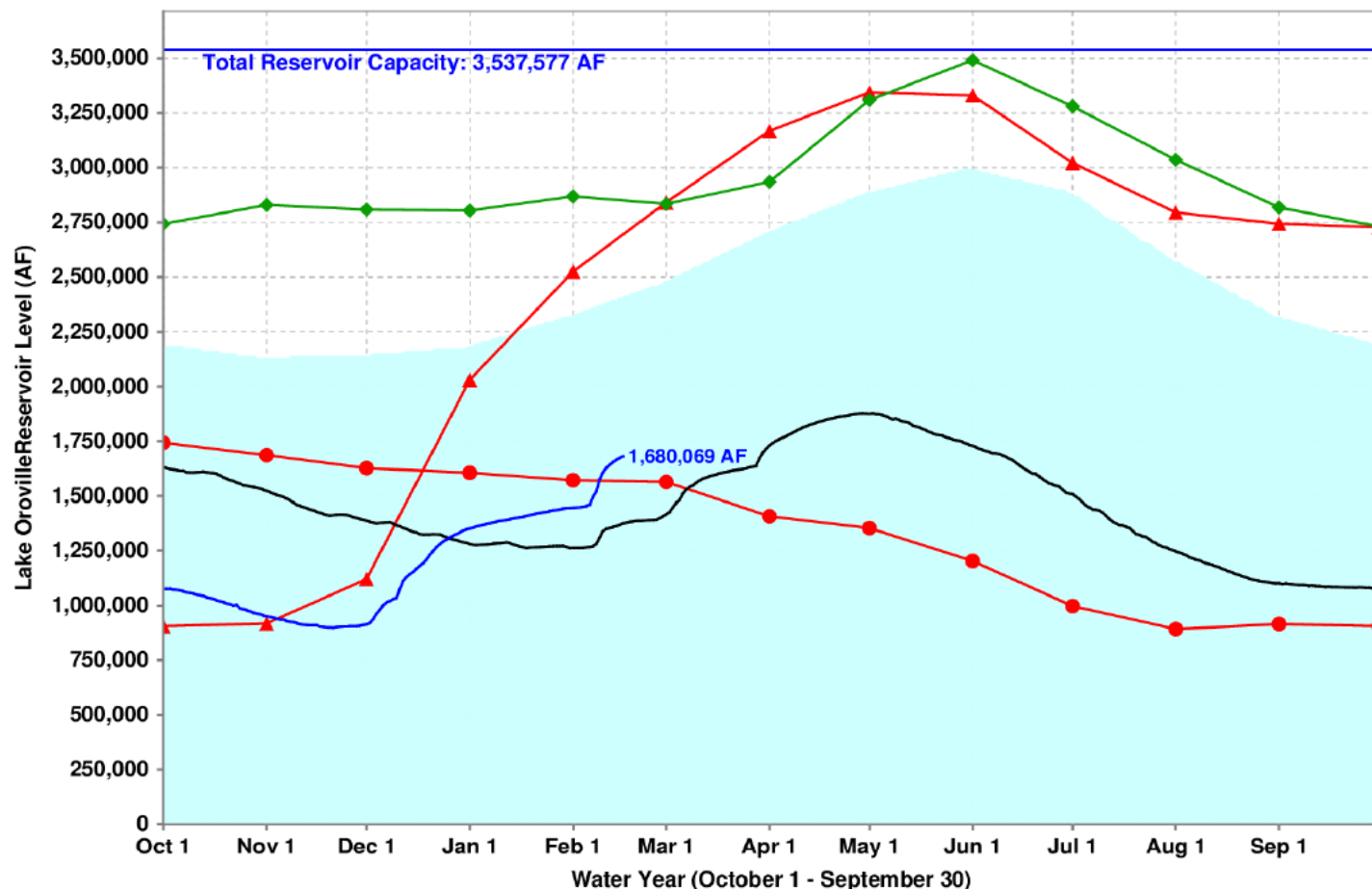
(as of Midnight - February 16, 2015)



Current Level: 1,680,069 AF

47% (Total Capacity) | 70% (Historical Avg.)

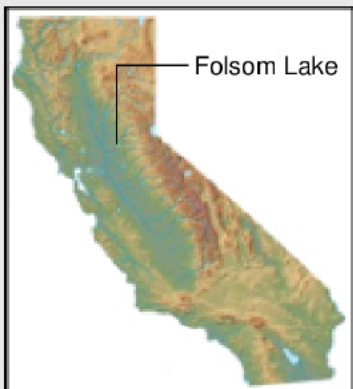
Lake Oroville Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average Total Reservoir Capacity 1976-1977 (Driest) 1977-1978 1982-1983 (Wettest) 2013-2014
Current: 2014-2015

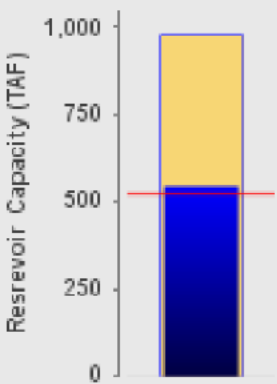


Reservoir Conditions - Folsom Lake



Folsom Lake Conditions

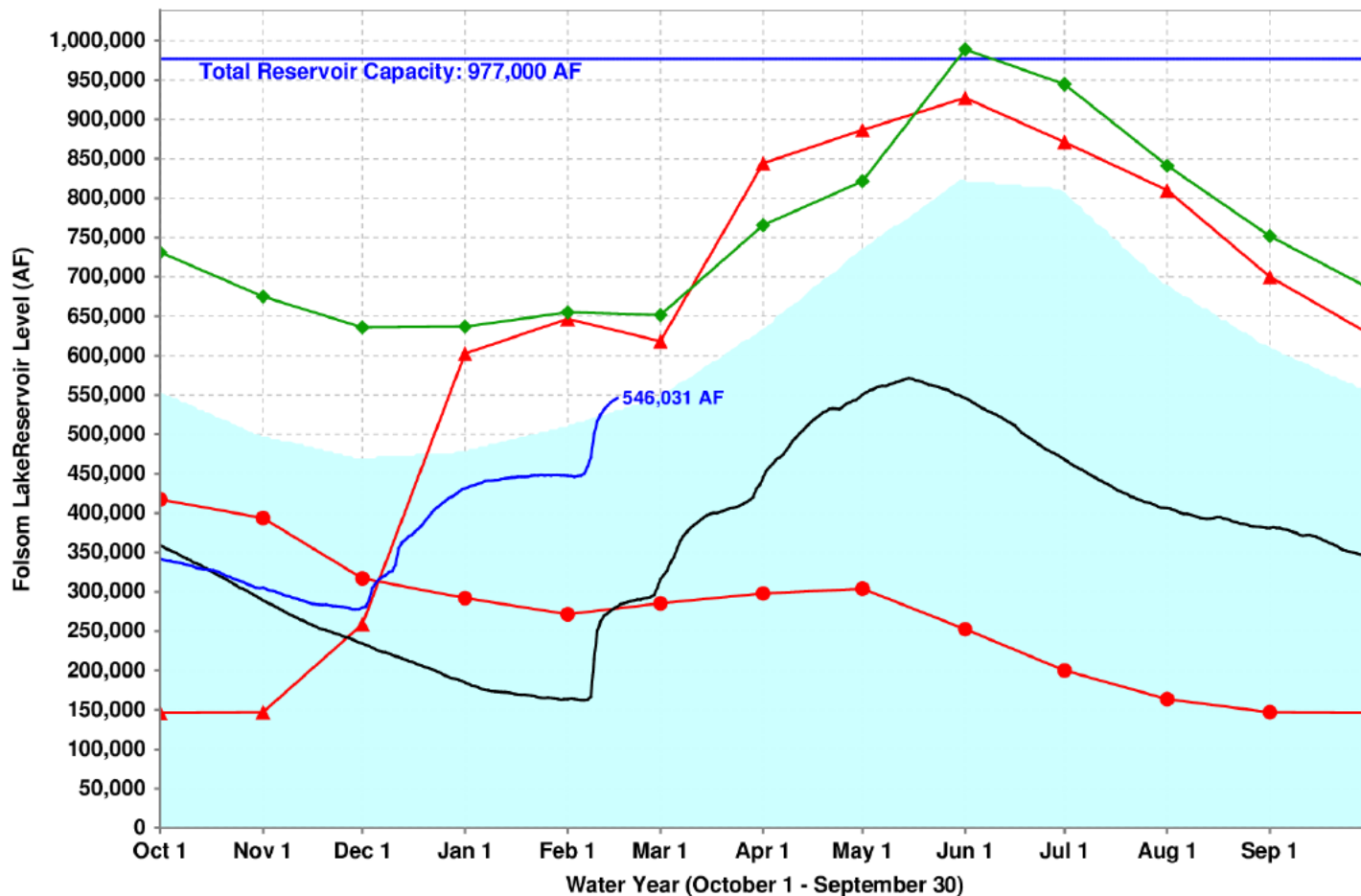
(as of Midnight - February 16, 2015)



Current Level: 546,031 AF

56% (Total Capacity) | 103% (Historical Avg.)

Folsom Lake Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



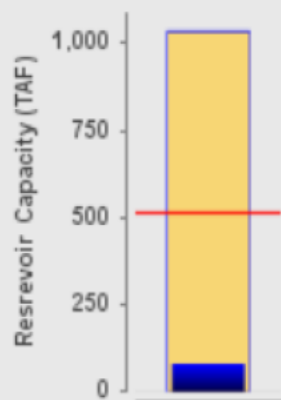


Reservoir Conditions - Exchequer



Exchequer Conditions

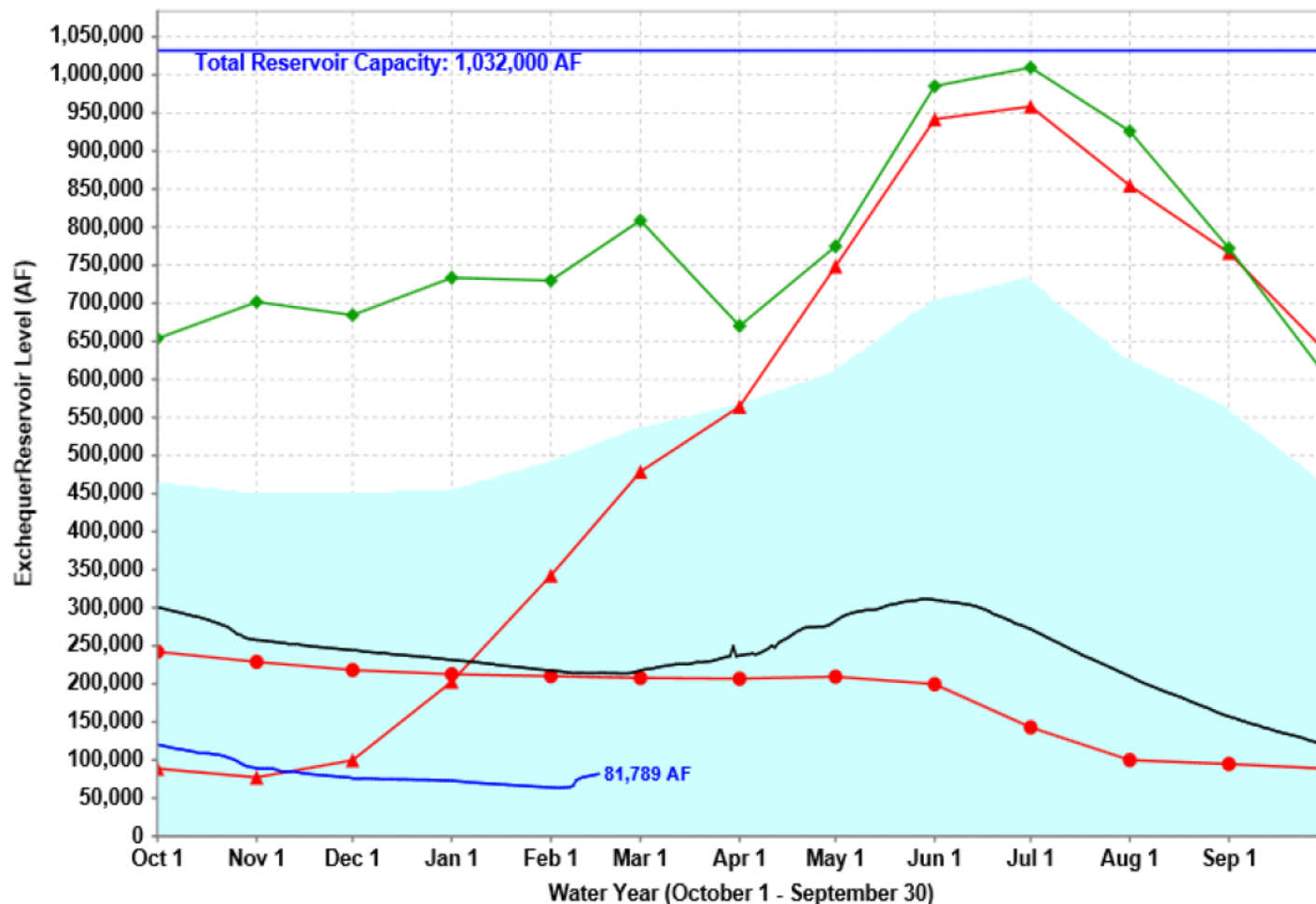
(as of Midnight - February 16, 2015)



Current Level: 81,789 AF

8% (Total Capacity) | 16% (Historical Avg.)

Exchequer Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average Total Reservoir Capacity 1976-1977 (Driest) 1977-1978 1982-1983 (Wettest) 2013-2014

Current: 2014-2015



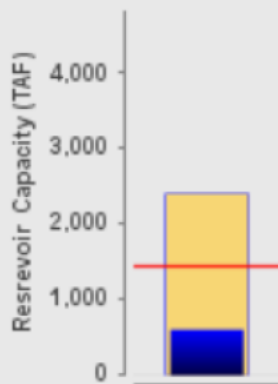
Reservoir Conditions - New Melones



New Melones

New Melones Conditions

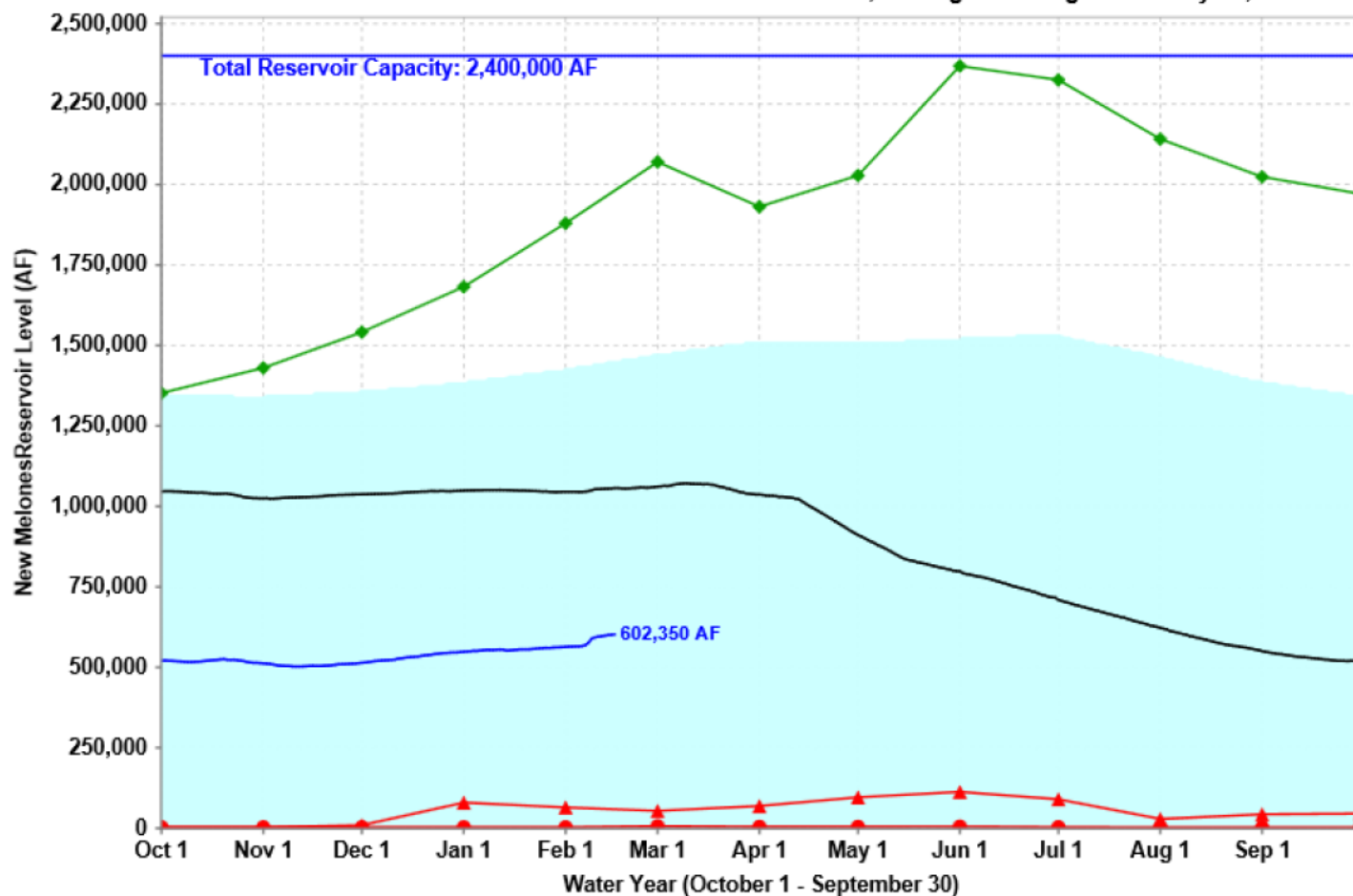
(as of Midnight - February 16, 2015)



Current Level: 602,350 AF

25% (Total Capacity) | 42% (Historical Avg.)

New Melones Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



Historical Average Total Reservoir Capacity 1976-1977 (Driest) 1977-1978 1982-1983 (Wettest) 2013-2014
Current: 2014-2015

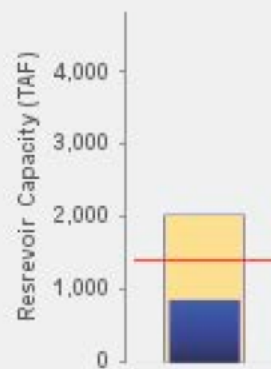


Reservoir Conditions - Don Pedro

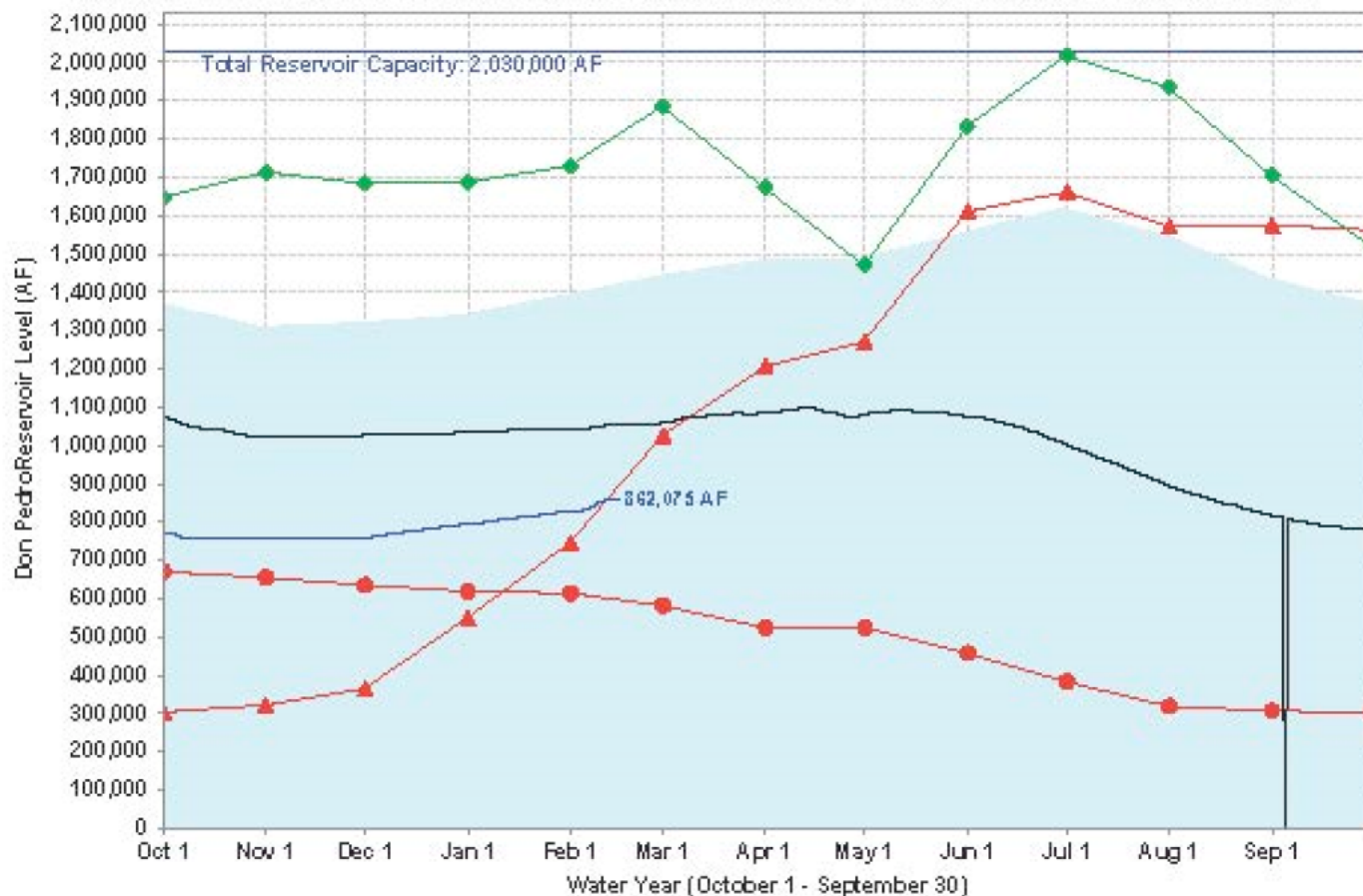


Don Pedro Conditions

(as of Midnight - February 16, 2015)

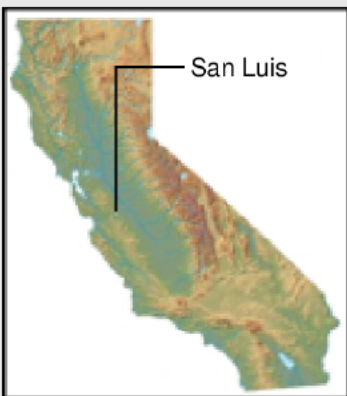


Don Pedro Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015



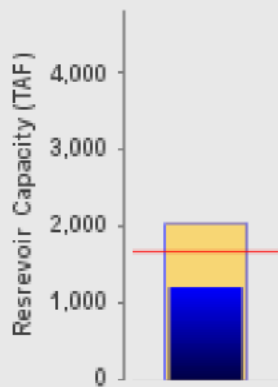


Reservoir Conditions - San Luis

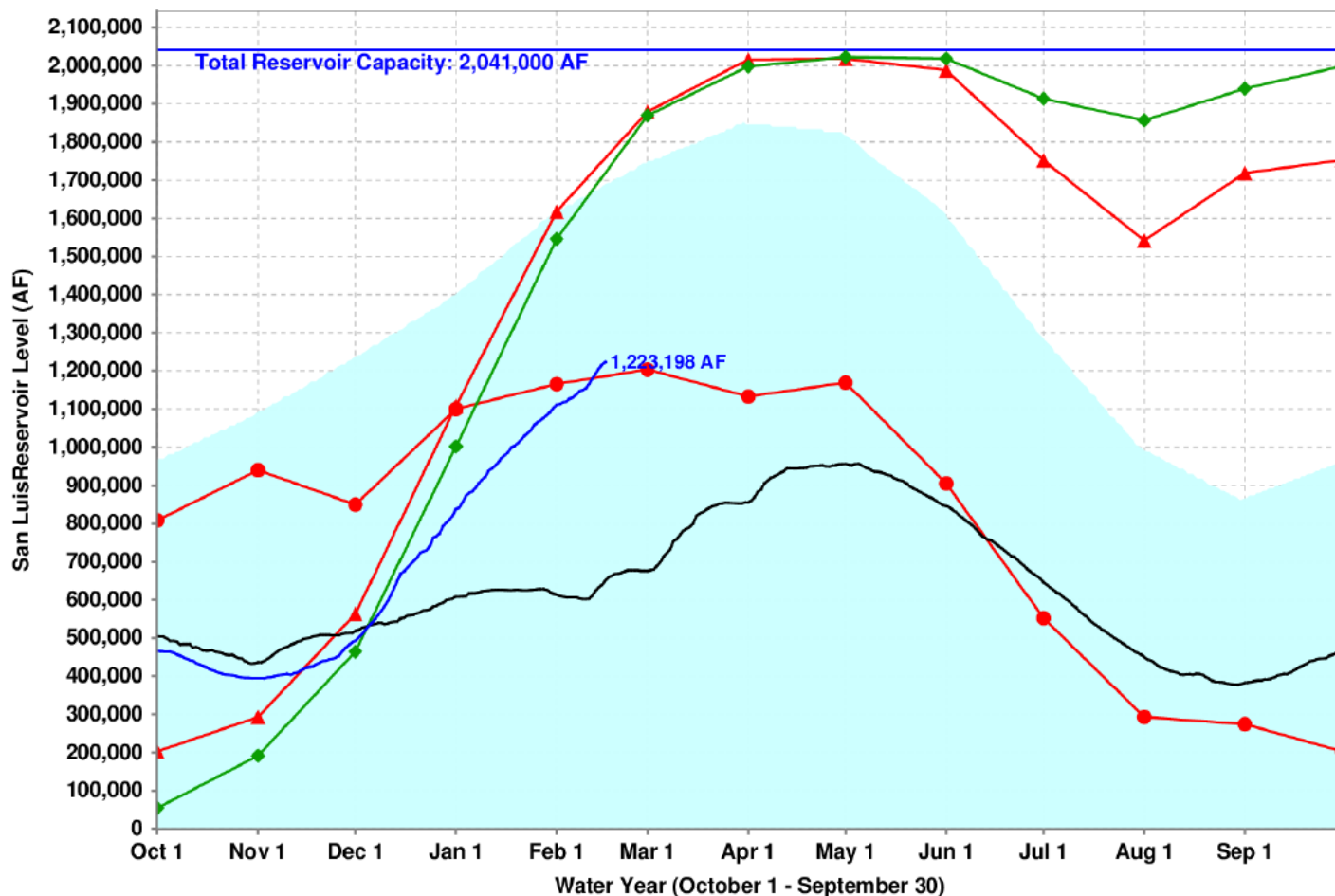


San Luis Conditions

(as of Midnight - February 16, 2015)



San Luis Levels: Various Past Water Years and Current Water Year, Ending At Midnight February 16, 2015

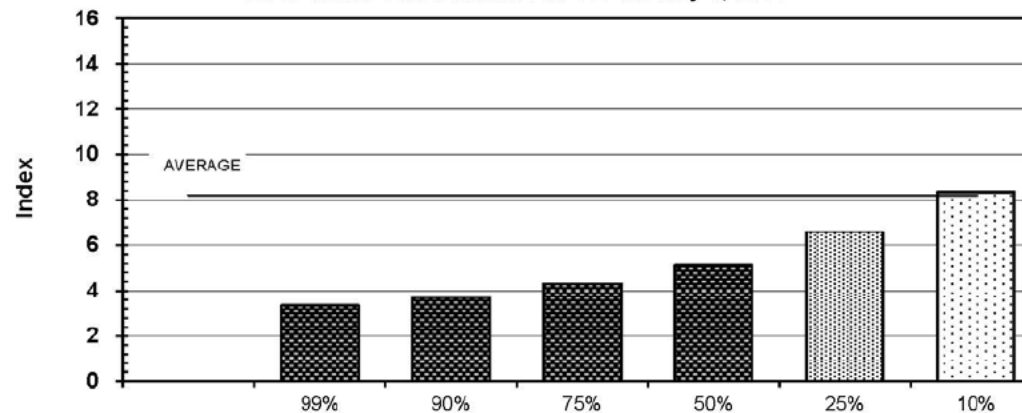


Historical Average Total Reservoir Capacity 1976-1977 (Driest) 1977-1978 1982-1983 (Wettest) 2013-2014

Current: 2014-2015

Temporary Urgency Change Petition

**SACRAMENTO VALLEY
WATER YEAR TYPE INDEX (40-30-30)
2015 Water Year Forecast as of February 1, 2015**



Date of Forecast	Probability of Exceedance					
	99%	90%	75%	50%	25%	10%
December 1, 2014	2.7	3.5	4.3	5.6	7.2	8.8
January 1, 2015	4.0	4.9	5.8	6.7	8.2	9.6
February 1, 2015	3.3	3.7	4.3	5.1	6.6	8.3
March 1, 2015						
April 1, 2015						
May 1, 2015						

Water Year Index based on flow in million acre feet

$$\begin{aligned} \text{Index} = & 0.4 * \text{Current Apr-Jul Runoff}^{(1)} \\ & + 0.3 * \text{Current Oct-Mar Runoff}^{(1)} \\ & + 0.3 * \text{Previous Year's Index}^{(2)} \end{aligned}$$

Notes:

- (1) Runoff is the sum of unimpaired flow in million acre-feet at:
 Sacramento River above Bend Bridge
 Feather River at Oroville (aka inflow to Lake Oroville)
 Yuba River near Smartville
 American River below Folsom Lake

- (2) Maximum 10.0 for previous year index term

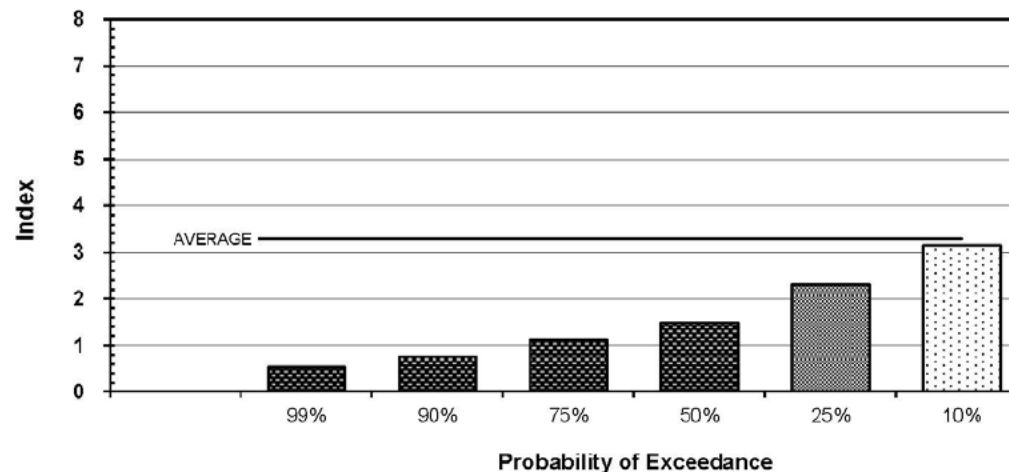
Previous Water Year Indices:

2014 =	4.1	50% of avg.
1977 (Min) =	3.1	38% of avg.
1983 (Max) =	15.3	186% of avg.
1961-2010 average =	8.2	

Year Classification

TYPE	INDEX
Wet	
Above Normal	9.2
Below Normal	7.8
Dry	6.5
Critical	5.4

**SAN JOAQUIN VALLEY
WATER YEAR TYPE INDEX (60-20-20)
2015 Water Year Forecast as of February 1, 2015**



Date of Forecast	Probability of Exceedance					
	99%	90%	75%	50%	25%	10%
December 1, 2014	0.7	1.0	1.4	2.0	2.8	3.8
January 1, 2015	0.8	1.1	1.4	2.1	2.7	3.6
February 1, 2015	0.5	0.8	1.1	1.5	2.3	3.1

Water Year Index based on flow in million acre feet

$$\begin{aligned} \text{Index} = & 0.6 * \text{Current Apr-Jul Runoff}^{(1)} \\ & + 0.2 * \text{Current Oct-Mar Runoff}^{(1)} \\ & + 0.2 * \text{Previous Year's Index}^{(2)} \end{aligned}$$

Notes:

(1) Runoff is the sum of unimpaired flow in million acre-feet at:

- Stanislaus River below Goodwin Reservoir (aka inflow to New Melones Res 1)
- Tuolumne River below La Grange (aka inflow to New Don Pedro Reservoir)
- Merced River below Merced Falls (aka inflow to Lake McClure)
- San Joaquin River inflow to Millerton Lake

(2) Maximum 4.5 for previous year index term

Year Classification

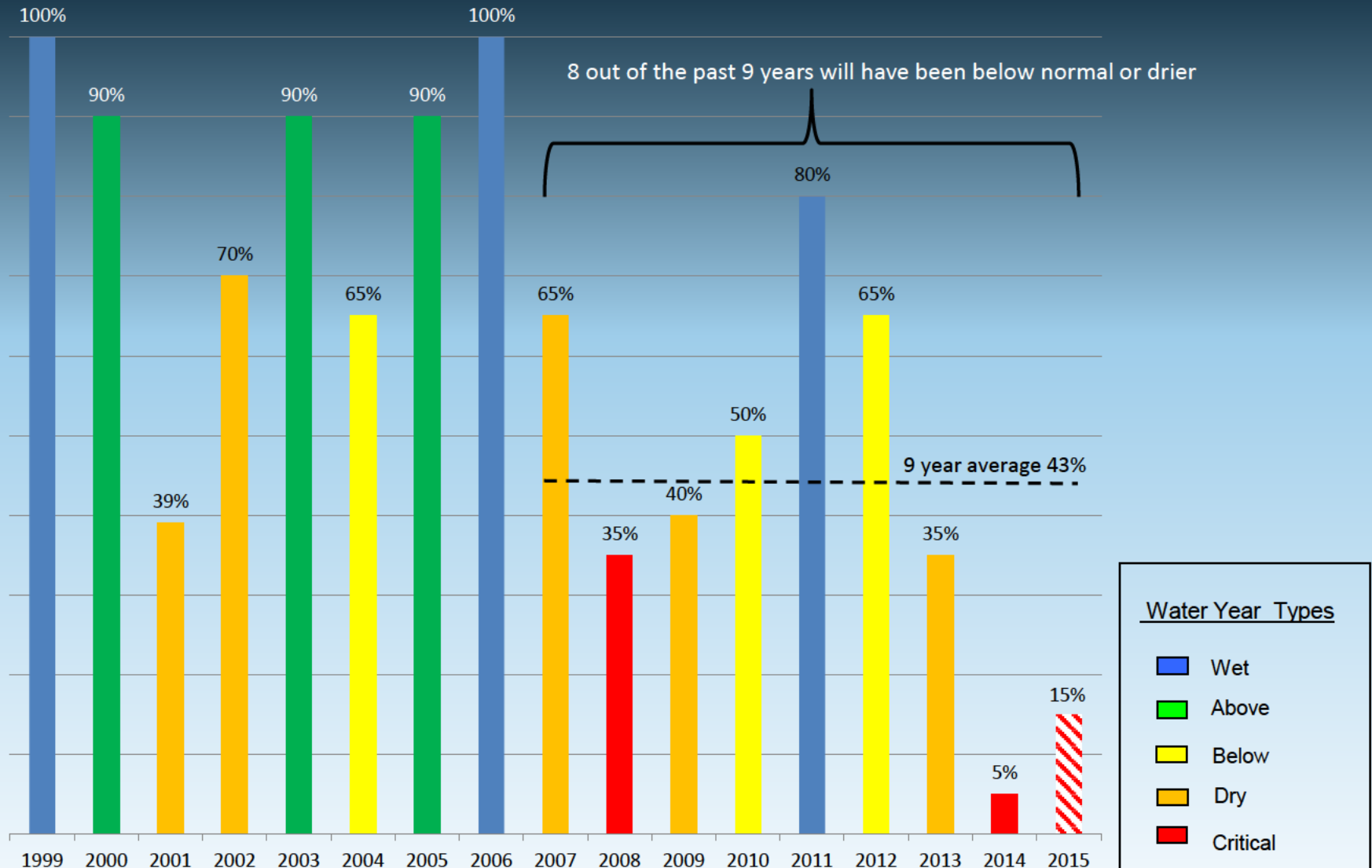
TYPE INDEX

Wet		3.8
Above Normal		3.1
Below Normal		2.5
Dry		2.1
Critical		

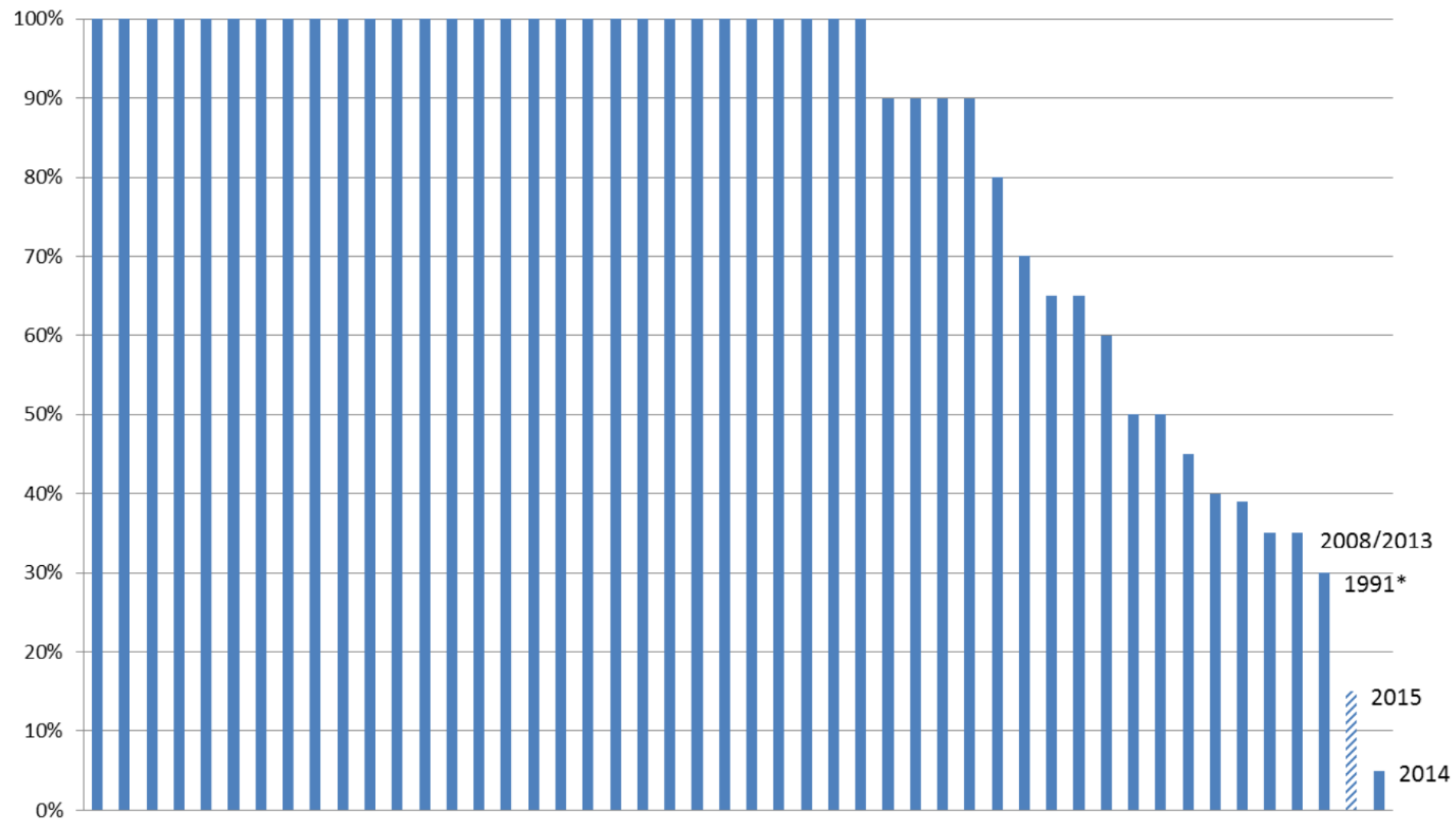
Previous Water Year Indices:

2014 =	1.2	35% of avg.
1977 (Min) =	0.8	26% of avg.
1983 (Max) =	7.2	219% of avg.
1961-2010 average =	3.3	

SWP Allocation by Year Type



SWP Allocation (sorted 1968 - 2015)



*0% allocation for ag in 1991

Purposes of January 23 TUCP

- 1) Conserve Upstream Storage**
- 2) Manage Delta Salinity**
- 3) Lessen Economic Losses**

D-1641 Bay-Delta Standards

With Likely 2015 TUCP Requests

CRITERIA	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	Jul 2015	Aug 2015	Sep 2015
Jan 1 - 50% Hydrology								
• Outflow								
Spring X2	Near-Term TUCP							
Minimum Outflow - mon.								
• River Flows								
@ Rio Vista - min. mon. avg.								
@ Vernalis: Base -min. mon. avg.	Near-Term TUCP		710 cfs		710 cfs	710 cfs	710 cfs	
Pulse objective				T.B.D.				
• Delta Cross Channel Gates	N-T TUCP							
• Salinity								
EC - Emmaton								

Jan 1 - 90% Hydrology

• Outflow								
Spring X2	Near-Term TUCP		7100 cfs	7100 cfs	7100 cfs			
Minimum Outflow - mon.								
• River Flows								
@ Rio Vista - min. mon. avg.								2500 cfs
@ Vernalis: Base -min. mon. avg.	Near-Term TUCP		500 cfs		500 cfs			
Pulse objective				T.B.D.				
• Delta Cross Channel Gates	N-T TUCP							
• Salinity								
EC - Emmaton			Requirement Moved to Three Mile Slough					

Jan 1 - 99% Hydrology

• Outflow								
Spring X2	Near-Term TUCP		4000 cfs	4000 cfs	Suspended			
Minimum Outflow - mon.						Suspended		
• River Flows								
@ Rio Vista - min. mon. avg.								Suspended
@ Vernalis: Base -min. mon. avg.	Near-Term TUCP		T.B.D.		T.B.D.			
Pulse objective				T.B.D.				
• Delta Cross Channel Gates	N-T TUCP		Conditional DCC Opening					
• Emergency Drought Barriers				Construction	Operational			
• Salinity								
EC - Emmaton			Suspended					

Specifics of January 23rd TUCP

- **Item 1: NDOI – 4000 cfs**
- **Item 2: SJR Flow – 500 cfs**
- **Item 3: DCC Gate – Conditional Opening**
- **Item 4: Export of Natural or Abandoned Flow**

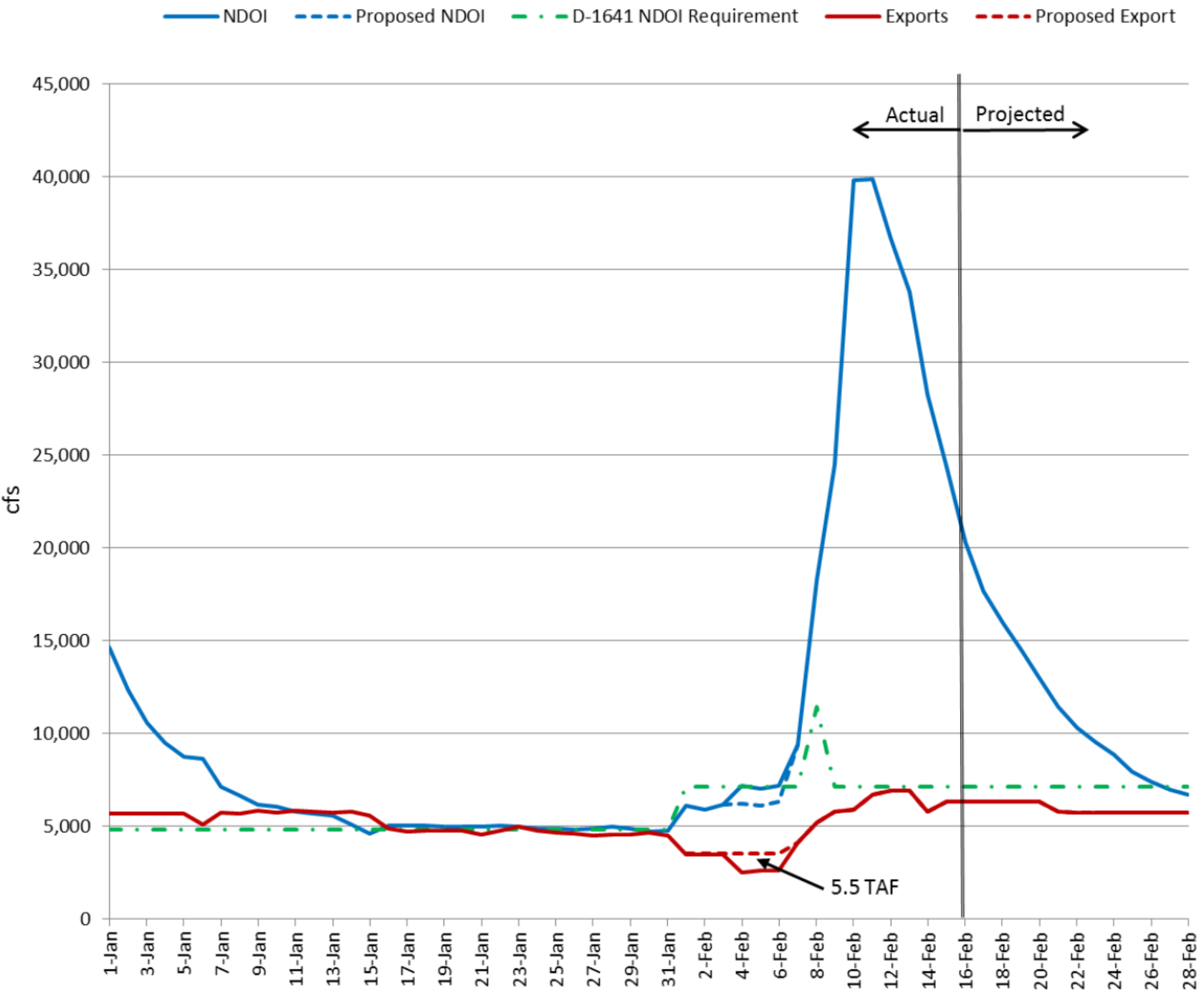
Export of Natural and Abandoned Flows

- > NDOI 7100 cfs (Approved TUCP 2014 and 2015)
- 5500 cfs > NDOI > 7100 cfs (Proposed TUCP 2015)

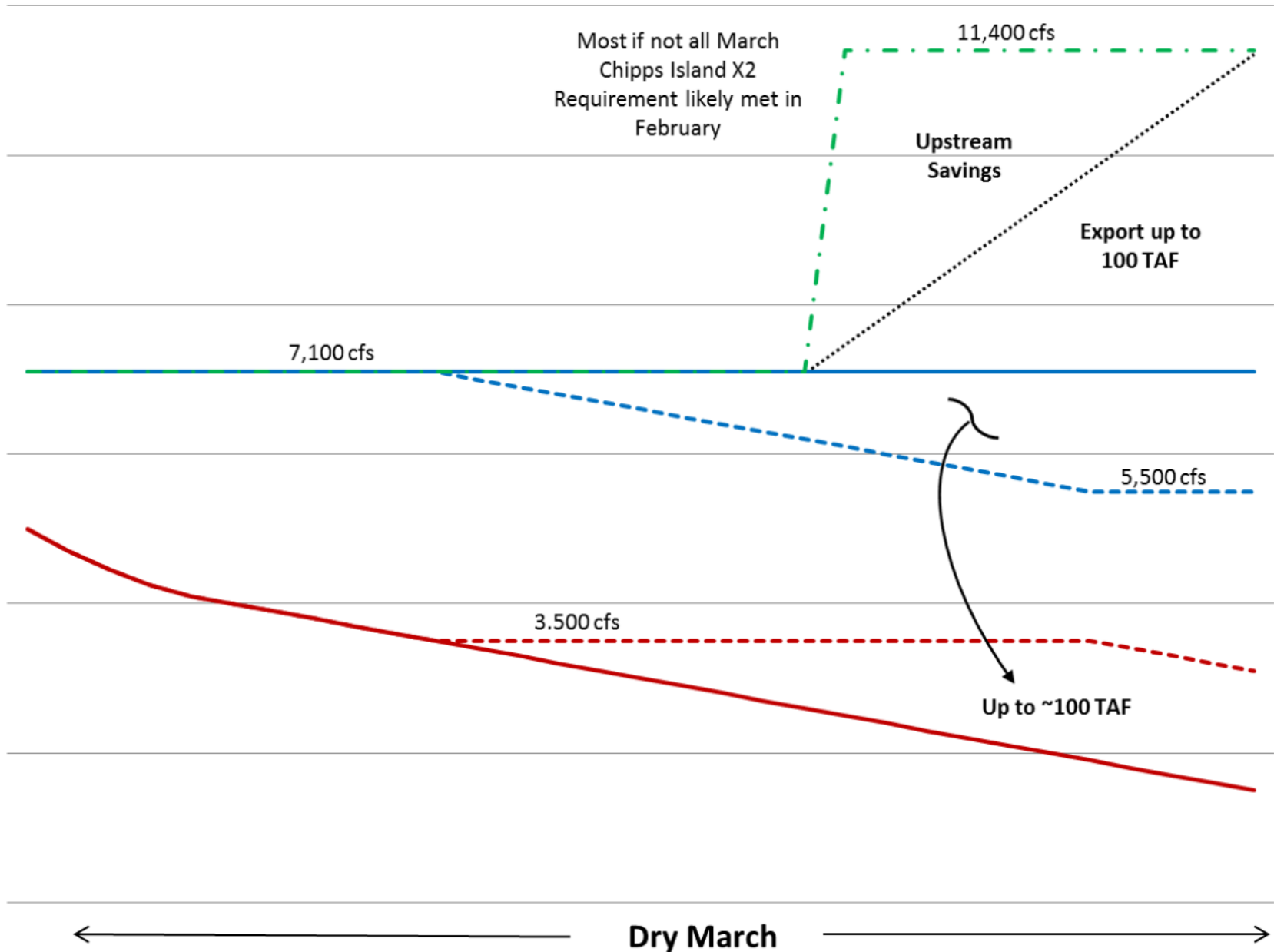
Fishery Protections

	February		March	
	E/I	OMR*	E/I	OMR*
>7100 cfs	45%	-5000 cfs	35%	-5000 cfs
Intermediate Step	20% - 35%	-3200 cfs	20% - 35%	-3200 cfs

* Exports Subject to More Protective OMR under BiOps



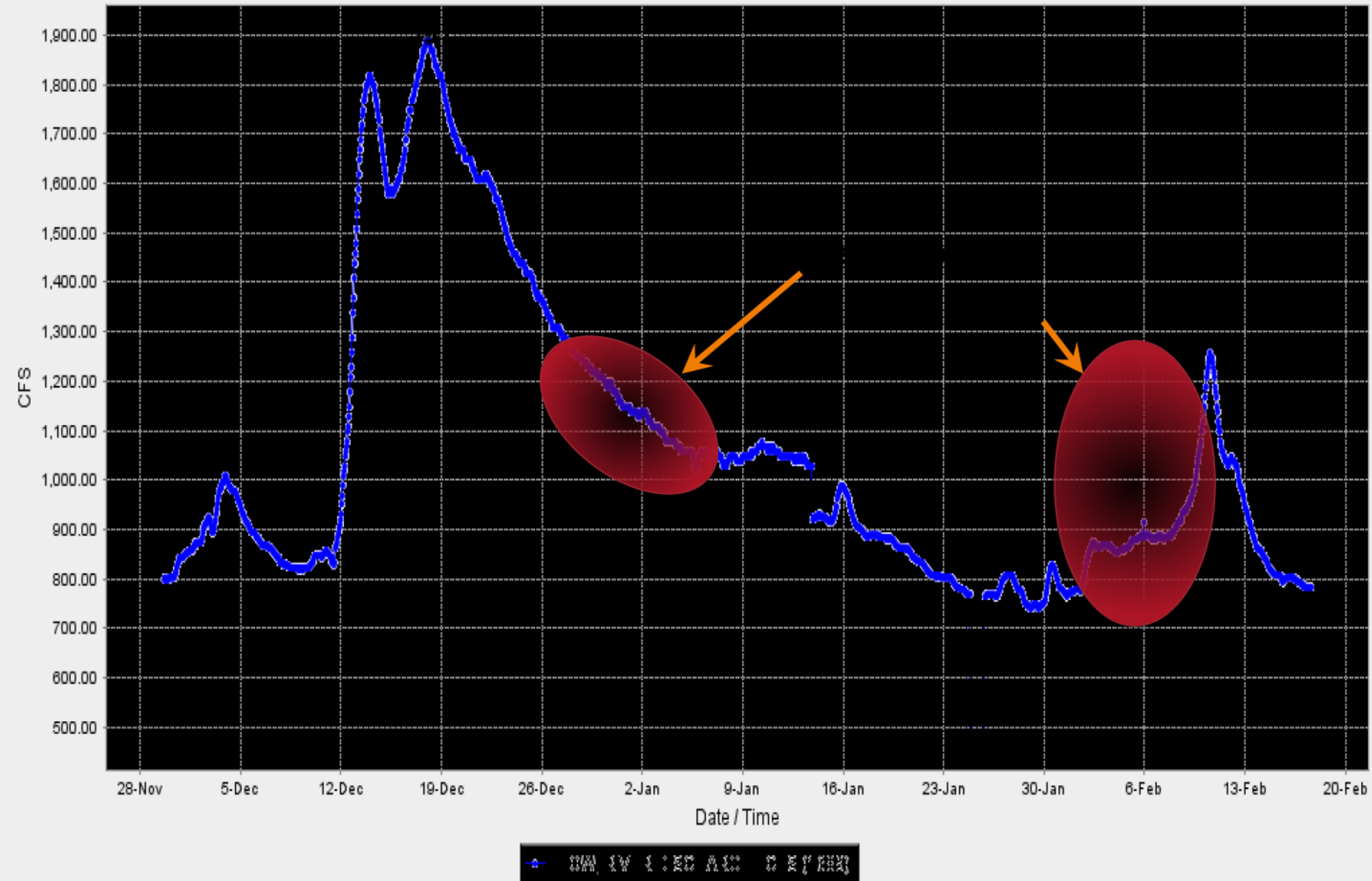
TUCP NDOI Proposed NDOI D-1641 Requirement TUCP Exports Proposed Export



SAN JOAQUIN RIVER NEAR VERNALIS (VNS)

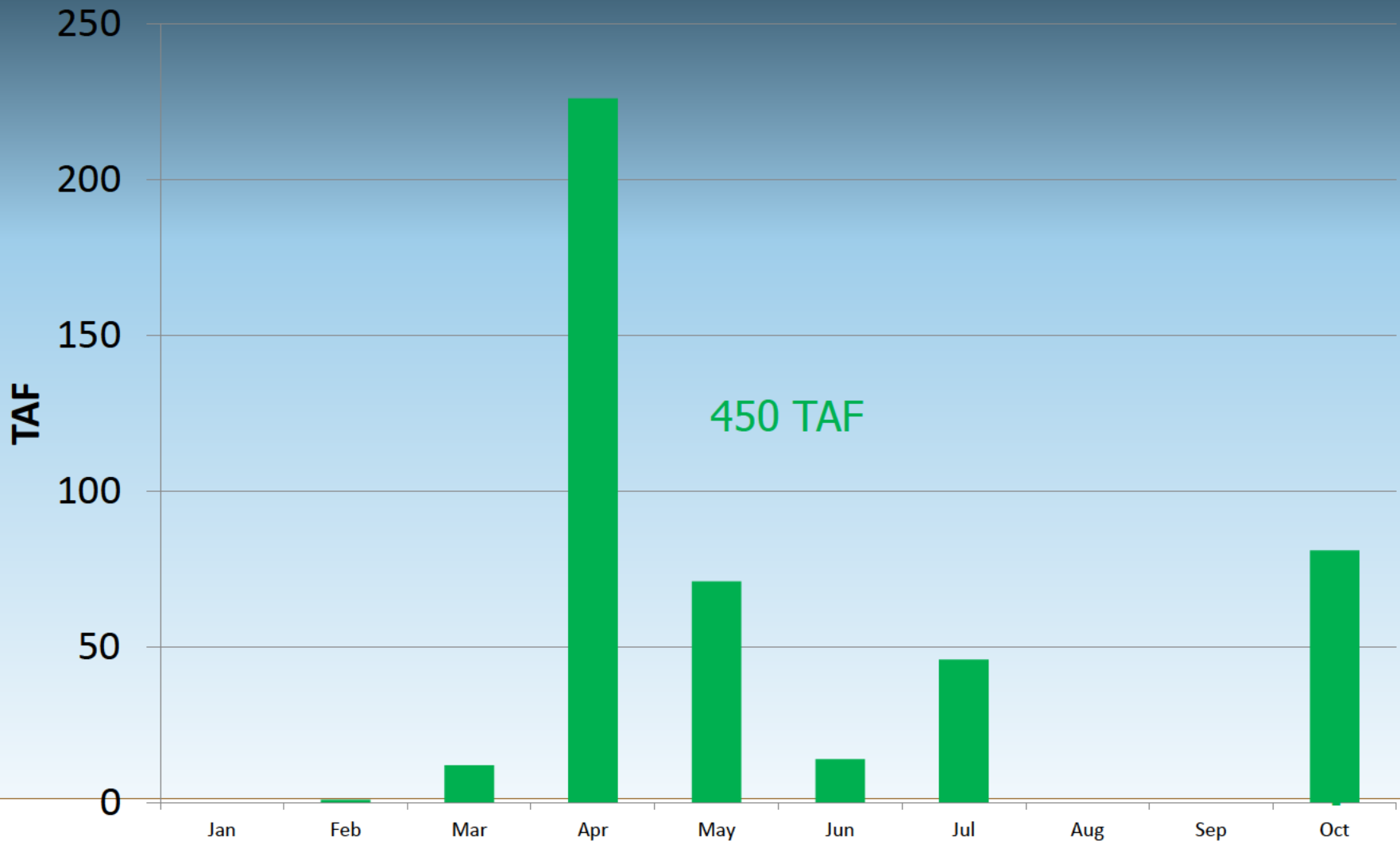
Date from 11/29/2014 14:59 through 02/17/2015 14:59 Duration : 80 days

Max of period : (12/18/2014 03:00, 1890.0) Min of period: (01/25/2015 10:00, 484.0)



2014 Review

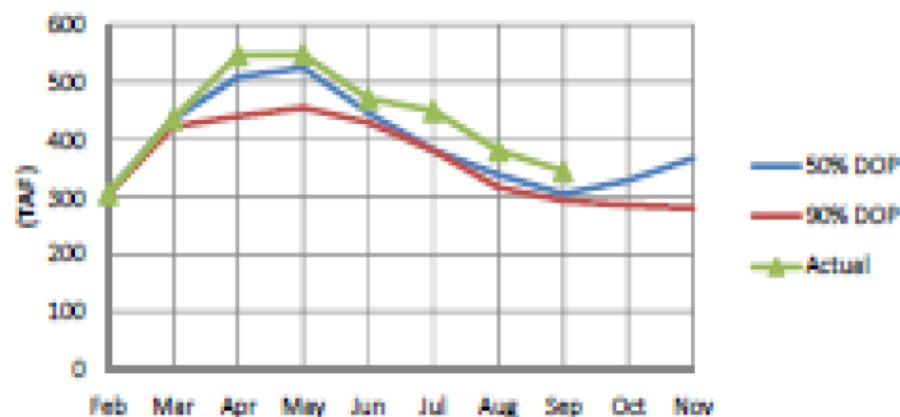
Conserved Water Under 2014 TUCP Order (SWP & CVP)



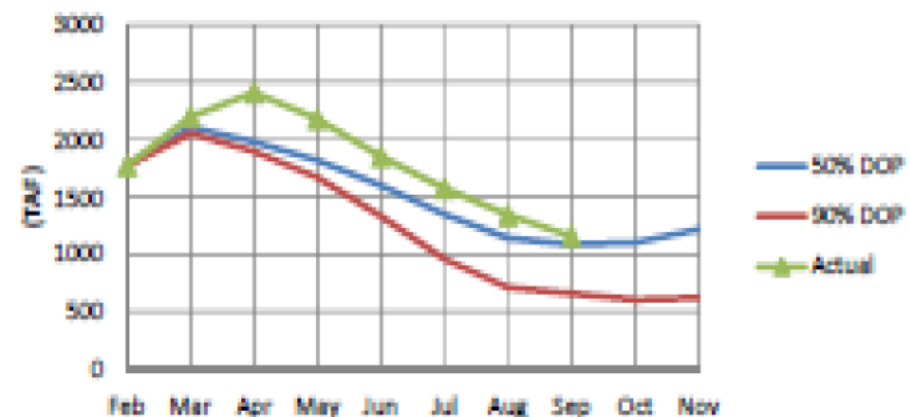
April 2014 Drought Operations Plan

Storage Tracking

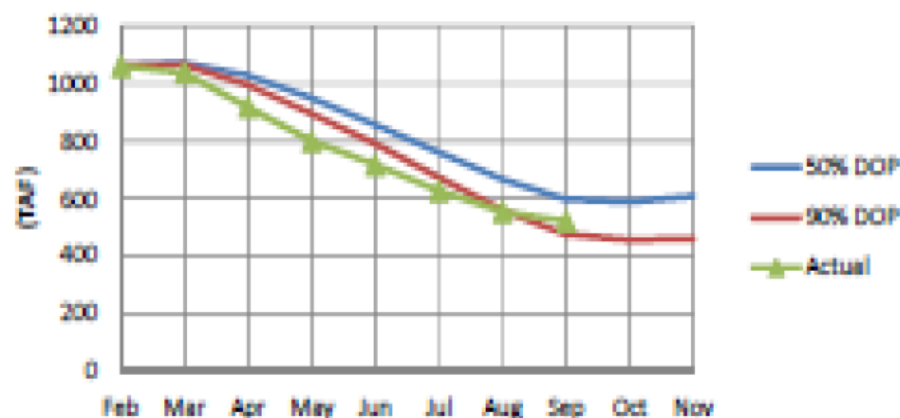
Folsom Lake
(end-of-month storage)



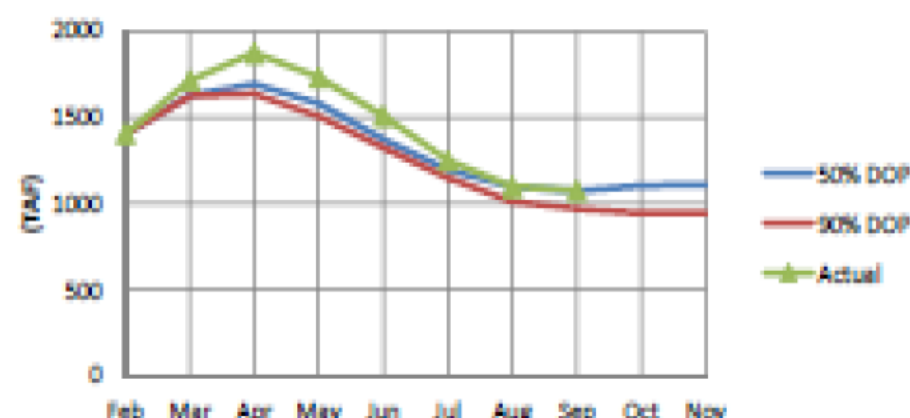
Lake Shasta
(end-of-month storage)



New Melones
(end-of-month storage)



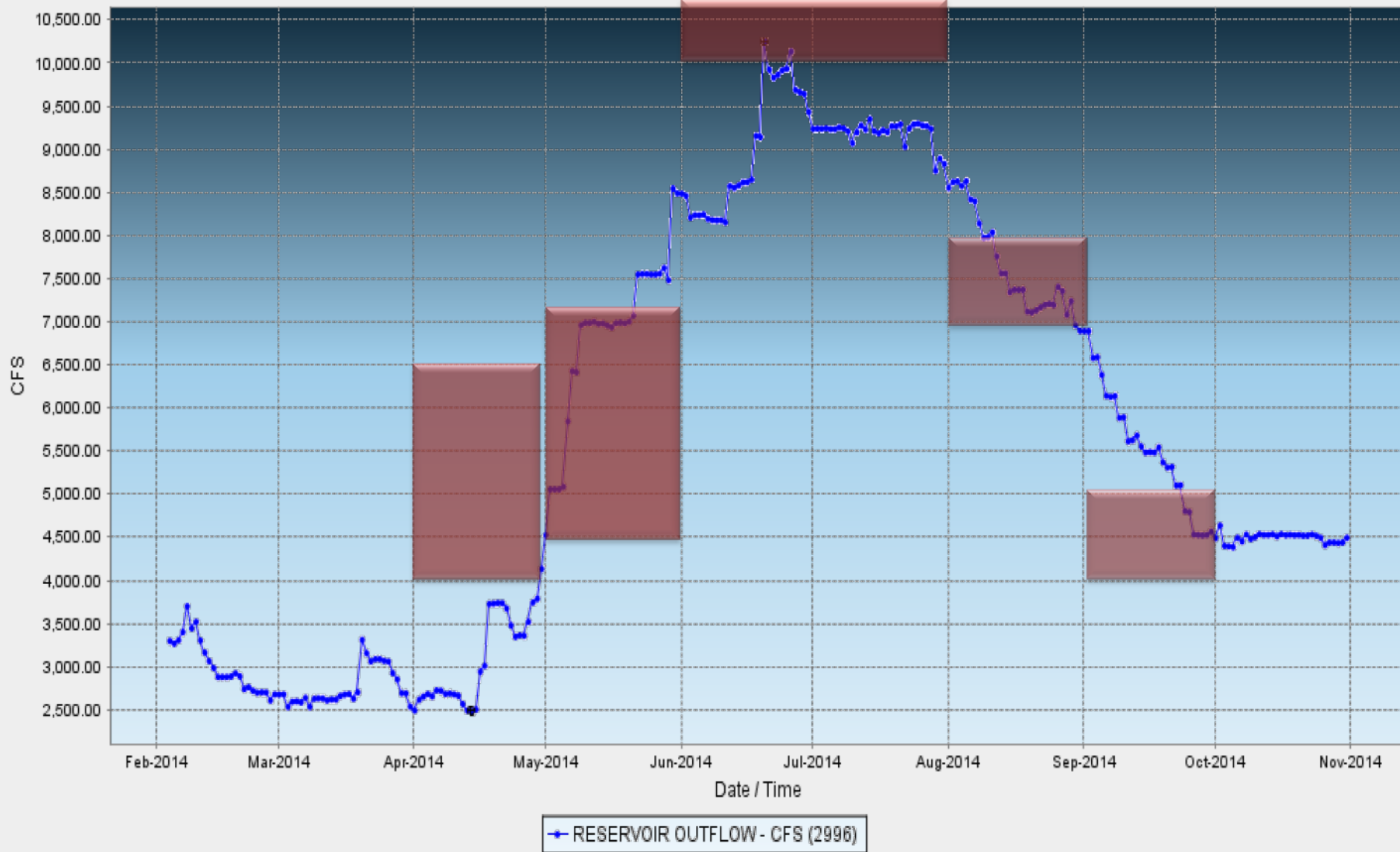
Lake Oroville
(end-of-month storage)



KESWICK RESERVOIR (KES)

Date from 02/03/2014 19:20 through 10/31/2014 19:20 Duration : 269 days

Max of period : (06/20/2014 00:00, 10256.0) Min of period : (04/14/2014 00:00, 2489.0)



Release Ranges from April 2014 DOP

Thank You

The Governor asked all Californians to reduce water consumption by **20 percent** and referred residents and water agencies to the Save Our Water campaign -- www.saveourh20.org

20% REDUCTION
in water use look like?

Save 196 gallons of water per day. There are some easy ways to reduce water use. Find the right combination for you to reduce by 20% or 30 gallons a day.

196 GALLONS PER DAY

INSTALL AERATORS ON BATHROOM FAUCETS <i>saves</i> 1.2 GALLONS per person/day	WASH ONLY FULL LOADS OF CLOTHES <i>saves</i> 15-45 GALLONS per load
TURN OFF WATER WHEN BRUSHING TEETH OR SHAVING <i>saves</i> 10 GALLONS per person/day	TAKE FIVE MINUTE SHOWERS INSTEAD OF 10 MINUTE SHOWERS <i>saves</i> 12.5 GALLONS with a water efficient showerhead
FILL THE BATHTUB HALFWAY OR LESS <i>saves</i> 70 GALLONS	INSTALL A WATER-EFFICIENT SHOWER HEAD <i>saves</i> 2.5 GALLONS per shower



From: Jason Peltier

Sent: Thursday, February 26, 2015 11:53 AM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: FW: CVP Initial Allocation Water Service Contractors Call on Friday, Feb. 27

From: Sierzputowski, Janet [mailto:jsierzputowski@usbr.gov]

Sent: Wednesday, February 25, 2015 1:24 PM

To: Janet Sierzputowski

Subject: CVP Initial Allocation Water Service Contractors Call on Friday, Feb. 27

Hello.

On Friday, 2/27/15, the Bureau of Reclamation will announce the initial Central Valley Project 2015 Water Supply Allocation. This email is to notify you of a telephone briefing on Friday, 2/27/15, at 10am PST/1pm EST for key Water Service Contractors. Call-in details follow:

Who: Call will be led by the Mid-Pacific Region

What: Reclamation briefing for Water Service Contractors

When: Friday, 2/27/15, at 10am PST/1pm EST

Call-in: Conference #1-877-416-9141 Password 2576529# (there are 100 ports)

Thank you.

Janet Sierzputowski, Public Affairs Specialist
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way, MP-140, Sacramento, CA 95825
Office 916-978-5112, Cell 916-943-6944

From: Jason Peltier

Sent: Thursday, February 26, 2015 3:57 PM

To: Dennis Cardoza; Joe Findaro; David Bernhardt; Ed Manning; Carolyn Jensen (cjensen@ka-pow.com); Michael Burns

Subject: FW: Media Availability for Reclamation Allocation Announcement

FYI

From: Gayle Holman, Public Affairs Rep [mailto:gholman@westlandswater.org]

Sent: Thursday, February 26, 2015 2:50 PM

To: jpeltier@westlandswater.org

Subject: Media Availability for Reclamation Allocation Announcement

FOR IMMEDIATE RELEASE
February 26, 2015

Contact: Katie Rodgers, Fresno County
Farm Bureau
(559) 237-0263, info@fcfb.org
Gayle Holman, Westlands Water District
(559) [REDACTED] - [REDACTED]
gholman@westlandswater.org

Media Availability Tomorrow

Media availability in reaction to the Bureau of Reclamation's announcement of federal Central Valley Project surface water availabilities

What: Representatives from the community will be available to speak with the media regarding the Bureau of Reclamation's announcement of the federal Central Valley Project surface water availability.

When: Friday, Feb. 27, 2015
11 a.m.

Where: Fresno County Farm Bureau
1274 W. Hedges Avenue
Fresno, CA 93728
Representatives will also be available for phone interviews. If possible, please schedule with FCFB ahead of time.

Who: Representatives from:

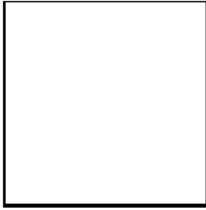
- Agricultural Organizations
- Agricultural Water Districts
- Community and Education Leaders
- Farmers

A full list of speakers will be available Friday morning.

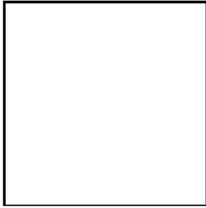
Additional Resources: [The Central Valley Project](#)

Background: *The Central Valley Project (CVP) is a federal water management project under the supervision of the U.S. Bureau of Reclamation. Locally, it affects Fresno County-based districts such as Westlands, Panoche and San Luis water districts and Tranquillity and James irrigation districts, as well as other districts along the Valley's west side and the Friant Unit on the east side.*

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Westlands Water District | 3130 N. Fresno Street | P.O. Box 6056 | Fresno | CA | 93703-6056

From: Bernhardt, David L.

Sent: Friday, February 27, 2015 2:19 PM

To: Jason Peltier; Thomas W. (Tom) Birmingham Esq.; Joseph T. Findaro

Subject: Fwd: From E&ENews PM -- DROUGHT: For second straight year, feds predict no water for Calif. farmers

Subject: From E&ENews PM -- DROUGHT: For second straight year, feds predict no water for Calif. farmers

Reply-To: <dbernhardt@bhfs.com>

This E&ENews PM story was sent to you by: dbernhardt@bhfs.com

E&ENews PM

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DROUGHT:

For second straight year, feds predict no water for Calif. farmers

Debra Kahn, E&E reporter

Published: Friday, February 27, 2015

Farmers in California's drought-plagued Central Valley are facing dire predictions for water deliveries later this year.

The Bureau of Reclamation announced today that farmers should not expect any supplies from the federally managed Central Valley Project, which in normal years delivers enough water to irrigate 3 million acres of farmland.

The second straight year of severe cuts is unprecedented, officials said. Last year, Reclamation was also able to provide none of its normal supply to certain agricultural customers, who are last in line under a complex system of water rights. The most any customer received was 75 percent of contracted deliveries ([E&ENews PM](#), Jan. 23).

"We are bracing for a potential fourth year of severe drought, and this low initial allocation is yet another indicator of the dire situation," said Reclamation Mid-Pacific Regional Director David Murillo. "Reclamation and the Department of the Interior will continue to work with the state of California and our water users to do everything possible to increase water deliveries from the project as we move from yet another difficult year."

Reservoir levels are well below average, following the driest January in history in Northern California, which typically receives the lion's share of precipitation. The seven major reservoirs that constitute the majority of CVP storage are at 69 percent of their average capacity for this time of year.



Water from the CVP is delivered to various regions of the valley under a complex priority system. Reclamation is projecting that farmers on the north, south and east of the valley will receive none of their contracted deliveries, while industrial and municipal contractors will receive at least 25 percent of their historic usage levels.

A farmers' trade group decried the announcement and also used it to argue for federal and state policies to send more water to farmers rather than reserving it to maintain in-stream flows for fish and other wildlife.

"The CVP announcement is both saddening and maddening," said Paul Wenger, president of the California Farm Bureau Federation. "It's saddening because the continued cutoff of water will prolong the impact of water shortages on farmers, their employees and rural communities. It's maddening because California still struggles to manage water wisely and flexibly, especially in dry years."

He called on Congress to "provide relief from rigid environmental laws that have failed to balance species protections with human needs."

Lawmakers on both sides of the aisle introduced bills last year to increase water deliveries to farms and cities in the southern half of the state. The bills targeted Endangered Species Act protections for fish species that inhabit the Sacramento-San Joaquin River Delta, the state's main water hub -- inflaming long-standing geographic tensions in the state over how much water is reserved for farms versus endangered fish and other species. Talks this year are still ongoing ([Greenwire](#), Jan. 28).

A major agricultural water contractor in the San Joaquin Valley, the Westlands Water District, also cited the congressional negotiations as a reason for optimism.

"The federal government's Central Valley Project is broken," Westlands President Don Peracchi said. "Fortunately, California's leaders from both political parties in the U.S. Senate and House of Representatives have been working together for more than a year on legislation that would help to restore reliability to our water system in order to protect the economy and the environment."

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122 C St. NW, Ste. 722, Wash., D.C. 20001
Phone: 202-628-6500 Fax: 202-737-5299
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From: Gayle Holman

Sent: Friday, February 27, 2015 4:08 PM

To: 'Tom Birmingham'; 'Donald Peracchi'; fcoelho@westlandswater.org; Jim Anderson; Daniel Errotabere; gesajian@westlandswater.org; 'Larry Enos'; 'Todd Neves'; 'Alan Sano'; 'Sarah Clark Woolf'

CC: 'Jason Peltier'; 'Ed Manning'; 'Michael Burns'; 'Carolyn Jensen'; 'David Bernhardt'; Denny Rehberg; dcardoza@foley.com; joe.findaro@akerman.com

Subject: Peracchi Statement as Op-Ed on Fresno Bee Website

Fresno Bee asked to put Don Peracchi's statement on their website as an op-ed which will run in Saturday's newspaper. Here is the online version just recently placed on their website. Feel free to distribute the link:

It is on [fresnobee.com](http://www.fresnobee.com)

Here is the link: <http://www.fresnobee.com/2015/02/27/4400681/don-peracchi-sen-boxer-again-theres.html>

Gayle

Gayle Holman
Public Affairs Representative
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED] - [REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

From: Jason Peltier

Sent: Saturday, February 28, 2015 7:41 AM

To: Tom Birmingham; Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt; Dan Dooley

Subject: Doyle on legislation

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Email

Share

New California water legislation might be on tap

BY MICHAEL DOYLE

MCCLATCHY WASHINGTON BUREAU

02/27/2015 5:38 PM

02/27/2015 5:38 PM

Read more here: <http://www.sacbee.com/news/state/california/water-and-drought/article11394692.html#storylink=cpy>

WASHINGTON

California water legislation is starting to trickle across Capitol Hill.

One newly introduced bill would speed approval of Sites Reservoir in the Sacramento Valley. Another would help restore San Francisco Bay habitat. More targeted bills are coming.

So are some frustrations.

“I feel like that pop song, ‘Call Me Maybe,’” said Rep. Jared Huffman, D-San Rafael.

One month ago, Huffman and six other House Democrats met privately with Democratic Sen. Dianne Feinstein to discuss water legislation. The meeting was a bit of a do-over, as the Northern Californians had resisted Feinstein’s efforts last year to cut a deal primarily with House Republicans.

The House Democrats left the Jan. 27 meeting in Feinstein’s office flashing thumbs-up about a new cooperative spirit, while keeping mum about all relevant details.

Since then, Huffman said this week after meeting on Capitol Hill with Association of California Water Agencies members, he has not received any further contact about writing a broad California water bill.

“We’re ready,” Huffman said, sounding vexed.

But one of the few Democrats who has sided with Republicans on California water efforts, Rep. Jim Costa, D-Fresno, said Friday that “we’re working on legislation and meeting with different groups.” He indicated the final product will eventually be shared with Northern California lawmakers.

“I’m sure they’ll have a chance to see the language,” Costa said, “though I’m not sure they’ll support it.”

Costa suggested California water legislation might move in several pieces this year. On Feb. 26, Rep. John Garamendi, D-Walnut Grove, and Doug LaMalfa, R-Oroville, introduced a bill in support of Sites Reservoir, a 1.8 million-acre storage project proposed for Glenn and Colusa counties.

Costa indicated that in coming weeks another bill could be introduced boosting “operational flexibility” for federal water projects in California. This could increase water deliveries to farms, and environmentalists might not like it. Following that, Costa said, other water projects might be pushed.

Last year, proponents of major California water legislation insisted speed was essential, and they sailed forth with big, catch-all vessels.

The first House bill last year, dubbed the Sacramento-San Joaquin Valley Emergency Water Delivery Act, raced directly to the House floor a week after it was introduced. The second effort, dubbed the California Emergency Drought Relief Act, was similarly pushed through the House a week after its introduction. Neither bill went through the standard committee review process.

“The bill just burbled up,” Rep. Peter DeFazio of Oregon, the senior Democrat on the House Committee on Natural Resources, complained last December.

Then the bill died in the face of opposition from the Obama administration, California Gov. Jerry Brown, Democratic Sen. Barbara Boxer and lawmakers who represent the Sacramento-San Joaquin Delta.

The Republican-controlled House still remains ready this year to “move quickly,” according to Rep. David Valadao, R-Hanford, the lead author of last year’s major bills. With Republican Rep. Kevin McCarthy of Bakersfield serving as majority leader, getting California water legislation back for another House vote will still be a snap.

The Senate is one big question mark, though it’s not the only one.

A potential scenario is for a larger Western states water package to arise from the Senate Energy and Natural Resources Committee. California-specific language, potentially covering anything from water delivery changes to dam authorizations, might then be attached.

“We have to see what the Senate tells us us has to be different,” Valadao said. “We’ll work with whoever is necessary.”

The Obama administration’s role is another question. Last year, House Republicans complained the administration reacted slowly – perhaps, some thought, in search of tactical advantage. Democratic Sen. Barbara Boxer’s role will also be key, and possibly an evolving one now that she has announced she will retire after 2016.

“I hope they can keep on track to do a bipartisan bill,” said Tim Quinn, executive director of the Association of California Water Agencies.

McClatchy Washington Bureau reporter Michael Doyle can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

Comments

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Read more here: <http://www.sacbee.com/news/state/california/water-and-drought/article11394692.html#storylink=cpy>

From: Jason Peltier
Sent: Saturday, February 28, 2015 10:10 AM
To: Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt; Dan Dooley
CC: Gayle Holman
Subject: Fwd: Recap of Today's Media Coverage

Good Job Gayle!!!

Begin forwarded message:

From: Gayle Holman <gholman@westlandswater.org>
Date: February 27, 2015 at 5:07:33 PM PST
To: 'Donald Peracchi' <[REDACTED]@[REDACTED]>, 'Tom Birmingham' <tbirmingham@westlandswater.org>, 'Jason Peltier' <jpeltier@westlandswater.org>, 'Dan Pope' <dpope@westlandswater.org>, 'Ed Manning' <emanning@ka-pow.com>, 'Carolyn Jensen' <cjensen@ka-pow.com>, 'Michael Burns' <mburns@ka-pow.com>
Subject: Recap of Today's Media Coverage

Here is a brief recap of today's media coverage regarding Reclamation's allocation announcement. I'd say the event we held at the Farm Bureau was a huge success--we had close to 20 media outlets respond to our press advisory. As I receive links to the stories, I will add them to this sheet.

Bureau of Reclamation's Initial Allocation Announcement
TODAY'S MEDIA COVERAGE - February 27, 2015

Media outlet	Reporter	Link
Fresno Bee	Mark Grossi	http://www.fresnobee.com/2015/02/27/4400298/no-irrigation-water-again-this.html
Fresno Bee	Bill McEwen	http://www.fresnobee.com/2015/02/27/4400681_don-peracchi-sen-boxer-again-theres.html?rh=1
KQED	Sasha Khokha	
Cal Ag Today Newspaper		
El Pique (Spanish)		
Univision 21		
Ag Net West	Taylor Hillman	
KCBS Radio (San Francisco)	Anna	
ABC 30	Dale Yurong	
San Francisco Chronicle	Kurtis Alexander	
CNBC	Jeff Daniels	
Wall Street Journal	Jim Carlton	http://www.wsj.com/articles/its-not-just-farmers-vs-the-greenies-letters-to-the-editor-1425076881
Farm Press	Todd Fitchette	
KNW News Radio (Los Angeles)		
Capitol Radio	Amy Quinton	
Associated Press (Fresno, Sacramento)	Scott Smith, Fenit Nirappil	
LA Times		
KMJ		

San Jose Mercury News	Kim Soug-otto	

Gayle

Gayle Holman
Public Affairs Representative
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED] - [REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

From: Jason Peltier

Sent: Saturday, February 28, 2015 1:08 PM

To: Craig Manson; Philip Williams; Jon Rubin; Daniel O'Hanlon; David Bernhardt; Ara Azhderian; Dennis Cardoza

Subject: PEER - SCIENTIFIC FRAUD INFESTS FISH & WILDLIFE SERVICE TOP RANKS

<http://www.peer.org/news/news-releases/2015/02/25/scientific-fraud-infests-fish-and-wildlife-service-top-ranks/#.VO-y5uOFZRg.facebook>

From: Jason Peltier

Sent: Friday, March 6, 2015 4:31 PM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Miller in Chron

Opinion

Tap California's innovators to develop water policies

By George Miller |

March 6, 2015

After 40 years of working on California water issues, it sometimes feels to me as if we haven't learned anything.

When I began my congressional career in 1975, powerful San Joaquin Valley agricultural interests were planning new dams and a new water facility in the Sacramento-San Joaquin River Delta. Environmental needs were ignored, and enormous subsidies encouraged wasteful and environmentally damaging water use. As I left the Congress in January, despite some important steps forward — including enactment of the Central Valley Project Improvement Act — all of these challenges continued.

Federal water priorities are still being set in response to the demands of politically connected irrigators. Billions of taxpayer dollars have been spent on dams and canals to serve a small fraction of the state's economy, with little consideration of the needs of most Californians and the environment.

Four decades ago, the environmental and fishing communities did not yet have a seat at the water policy table. Today, they are being intentionally excluded from key policy debates.

The drought gripping California and the West should force us to face the new reality of water policy. The policies of the past century won't work in a future where we will face continued population growth and the effects of climate change.

Federal decision-makers need to acknowledge what most experts know: The era of building big dams that cause ecological havoc and cannot pay for themselves is over. Instead, we need to use existing technology and invest in innovations to generate the water we need at a price we can afford.

The roadblocks to adoption of a 21st century water policy are not caused by federal law, but by bureaucratic inertia and political pressure from beneficiaries of the status quo. Twenty years ago, for example, Congress authorized programs that convert wastewater into clean water. Yet the proposed 2016 federal budget devotes less than 2 percent of the U.S. Bureau of Reclamation's \$1.1 billion budget to water recycling.

Federal policy is mired in early 20th century thinking, in contrast with evolving thinking in Sacramento. Last year, Gov. Jerry Brown's Water Action Plan pointed the way to sustainable water policies, including long overdue groundwater-management legislation. Voters passed a water bond to finance groundwater clean up, water recycling, conservation and — it is hoped — modern water storage rather than traditional dams. These developments show the promise of a new direction.

Here are the cornerstones of an affordable, sustainable water policy:

Reduce reliance on the delta and increase local solutions: State and federal agencies must reduce reliance on the delta. That's already state policy. Our environment and economy will be stronger when users are less reliant on this overworked ecosystem. Progress is being made here.

Los Angeles, under the leadership of Mayor Eric Garcetti, plans to cut use of imported water by 50 percent by 2024. Many cities are refocusing on local sources, recognizing that conservation is our largest source of new water and that our ocean outfalls represent the next "river" for California to tap into. (Together, those outfalls dump more water than the combined flows of the Tuolumne, Merced and Stanislaus rivers.) These local sources will be more reliable in the future than over-allocated rivers that are subject to intensifying drought cycles.

Embrace credible economics: Huge water projects and water subsidies aren't just environmentally damaging, they also represent flawed economic policies that harm the taxpayer and California's economy. Smarter water sources are cheaper as well as greener. A more business-oriented approach will point to sustainable solutions that benefit the entire state, creating more jobs on farms, in our cities and in salmon-fishing communities.

Support agricultural modernization: Some farmers have made strides toward water efficiency, but we need to do much more because agriculture uses 80 percent of California's water. We can

build more sustainable agricultural communities by increasing efficiency; managing groundwater; cleaning up pollution that leaves rural communities without drinkable water; and avoiding an overemphasis on permanent, drought-susceptible crops, like almonds.

Develop restoration programs, not environmental rollbacks: Decades of antiquated water management have helped drive the San Francisco Bay-Delta ecosystem to its lowest level ever. Yet a few cynical interests are attempting to use the drought to weaken environmental laws.

Sacrificing our environment wouldn't end water shortages, but it could shut down the salmon fishery, endanger millions of migratory wildfowl and eliminate tens of thousands of jobs. Our natural resources need emergency restoration programs to help them survive droughts — not rollbacks that could lead to extinction of species and impoverished communities.

Adopt a 58-county approach: Rather than policies dominated by a few agricultural counties, California needs a 58-county water policy that meets the needs of the Bay Area, North Coast fishermen, South Coast cities, delta towns and Central Valley farmers.

California and Congress should no longer pursue “water grab” policies that take one region's water to benefit another. The best way to craft new policies is to involve all California interests, rather than pursue another generation of back-room water deals.

Ours is widely recognized as the nation's most innovative state — a global leader in entertainment, high technology and renewable energy. It's time that our water policies tapped into that creativity to use water-management strategies that ensure a thriving future for California's economy and environment.

George Miller represented Contra Costa and Solano counties in the U.S. House of Representatives from 1975 to 2015. To comment, submit your letter to the editor at www.sfgate.com/submissions.

From: Jason Peltier

Sent: Saturday, March 14, 2015 7:29 AM

To: Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt

CC: Tom Birmingham

Subject: Fresno event for Boehner attracts around 100, raises nearly \$200k | Political Notebook | FresnoBee.com

<http://www.fresnobee.com/2015/03/13/4425964/fresno-event-for-boehner-attracts.html>

From: Jason Peltier
Sent: Monday, March 16, 2015 9:37 AM
To: Dennis Cardoza; Joe Findaro; David Bernhardt
Subject: Fwd: Media inquiry: Dan Beard & his new book

Begin forwarded message:

From: Annie Snider <asnider@eenews.net>
Date: March 16, 2015 at 9:10:47 AM PDT
To: "jpeltier@westlandswater.org" <jpeltier@westlandswater.org>
Subject: Media inquiry: Dan Beard & his new book

Jason, I'm a reporter for *Greenwire*, where I write about national water issues. My California-based colleague, Debra Kahn, passed me your contact info. I'm working on a story about former Reclamation Commissioner Dan Beard's new book. If you know him, you can probably guess what it's about: he calls for an end to the bureau and big reforms to how Western water projects are authorized, funded, etc. He's also no fan of Westlands.

I'd like to get your perspective on both him and the agenda he lays out in the book. Might you have some time to talk by phone in the next day or two? I'd also welcome any suggestions you might have of other folks who have crossed paths with him over the years and would have a perspective on his latest effort.

Best,
Annie

Annie Snider
Reporter
asnider@eenews.net
202-446-0411 (p)
202-737-5299 (f)

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From: Jason Peltier
Sent: Tuesday, March 17, 2015 3:50 PM
To: Dennis Cardoza; Joe Findaro; David Bernhardt
Subject: FW: Director of Government Relations
Attachments: Position Descrip - Dir Govt Relations 2015.pdf

From: Jean-Mari Peltier [<mailto:jmpeltier@ngwi.org>]
Sent: Tuesday, March 17, 2015 2:24 PM
To: Jason Peltier
Subject: FW: Director of Government Relations

[Great position for the right person](#)

From: John Aguirre [<mailto:john@cawg.org>]
Sent: Tuesday, March 17, 2015 11:31 AM
To: Jean-Mari Peltier (jmpeltier@ngwi.org)
Subject: Director of Government Relations

Jean Mari:

We are looking for a director of government relations. Please feel free to share the attached with any candidates you think may be qualified and interested in the position.

John
JOHN AGUIRRE | **California Association of Winegrape Growers** | President
1121 L Street, Suite 304 | Sacramento, CA 95814
916 379 8995 | 1 800 241 1800 | www.cawg.org |



Title: Director of Government Relations

Organization: The California Association of Winegrape Growers (CAWG) is a leading wine industry association advocating for the interests of California winegrape growers before state and federal legislators and regulators, and international trade policy and standards setting organizations. The association keeps its members informed of key industry trends and issues, and provides quality education and networking opportunities.

Summary Description: The Director of Government Relations is responsible for helping the association meet its strategic goals and objectives by assuming day-to-day responsibility for CAWG state government affairs activities pertaining to matters of state legislative and regulatory issues. The Director is expected to monitor a wide range of state public policy issues and to represent the association before the California Legislature and key regulatory agencies. The Director will serve as staff liaison to the State Government Affairs Committee and CAWG's Political Action Committee (CAWG PAC).

Reports To: The President of CAWG

Member Interaction: The position requires significant, ongoing interaction with CAWG members and performance of duties as a staff liaison to State Government Affairs Committee and CAWG PAC. In addition, the Director is expected to attend all meetings of the Board of Directors. The Director will also deliver in-person updates on state government affairs issues to CAWG members and to wine industry operators at 'town-hall' meetings, and at other association and industry events around the state.

Specific Responsibilities:

1. Advance the association's state public policy agenda, goals and objectives on matters of state government affairs by monitoring and analyzing proposed legislative and regulatory actions, and assess how legislation, regulatory proposals and other initiatives may affect the association's membership.
2. Develop and execute advocacy strategies working with the CAWG President, Chairman of the State Government Affairs Committee, Board of Directors and contract lobbyist (The Gualco Group, Inc.).
3. Represent the association before California legislators, legislative staff, and state agency officials, including presentation of public testimony, and provide information and interviews to trade press and media reporters, as directed by the Communications Manager.

CAWG PROTECTS AND PROMOTES THE INTERESTS OF CALIFORNIA WINEGRAPE GROWERS BY PROVIDING MEMBERS A UNIFIED VOICE, EFFECTIVE ADVOCACY AND STRONG LEADERSHIP.

1121 L Street
Suite 304
Sacramento, CA 95814

TOLL FREE: 800 241 1800
PHONE: 916 379 8995
FAX: 916 379 8999

EMAIL: info@cawg.org
WEBSITE: www.cawg.org

4. Implement communication strategies and outreach initiatives to support and advance a government relations agenda. Develop and write key messages and supporting arguments, articles, speeches, background documents, brochures, presentations and reports.
5. Prepare memoranda, reports and issue papers that inform CAWG volunteer leaders and members of important issues and developments. Work with Communications Manager to ensure timely communication to members on key government relations issues and activities.
6. Manage association's grassroots activities to support legislative and regulatory policy agendas, and assist with planning and production of the association's 'Day at the Capitol' event.
7. Serve as staff liaison to the association's State Government Affairs Committee and CAWG PAC - including preparation of agendas and minutes, and provide support to other committees where state public policy issues are considered.
8. Work with CAWG PAC and contract lobbyist to develop political campaign contribution strategy. Work with Manager of Events and Education and other staff to plan and organize overall political action fundraising strategy and to plan specific CAWG PAC events.
9. Review and analyze regulations, statutes, policy papers, scientific documents and other policy-related documents and oral testimony to determine potential effects of public policy issues and proposals on the association's membership.
10. Monitor and participate in state rulemaking processes addressing issues of concern to winegrape growers, including reviewing proposed rules, development of comments and coordinating comments from the membership, researching issues relative to rulemaking, participating in rulemaking meetings and hearings.
11. Work with other organizations representing the wine industry, agricultural and commodity sectors, and environmental and public policy interests on issues affecting CAWG members for the purpose of developing and advancing coordinated positions on specific issues.
12. Establish, build and maintain strategic partnerships with political leaders, state agency leaders and their staff, other organizations, and community leaders.
13. Meet with winegrape growers and tour vineyards and wineries to learn about winegrowing practices and issues.
14. Perform other duties as needed or requested.

Position Requirements:

1. Skills & Abilities:

- Strong leadership skills that emphasize a team approach to problem-solving and an ability to work effectively in a coalition environment.
- Diplomacy in managing complex relationships in the association environment which include other CAWG staff, consultants and the association's volunteer leaders, representatives of wine industry organizations, coalition partners, legislators and their staff, administration officials and regulatory staff.

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MEMBERS A UNIFIED VOICE, EFFECTIVE ADVOCACY AND STRONG LEADERSHIP.

1121 L Street
Suite 304
Sacramento, CA 95814

TOLL FREE: 800 241 1800
PHONE: 916 379 8995
FAX: 916 379 8999

EMAIL: info@cawg.org
WEBSITE: www.cawg.org

- Outstanding written and interpersonal oral communication skills, including public speaking and speech writing skills, with proven abilities/successes in political relations.
- Proven ability to research and analyze topics and issues.
- Ability to –
 - Evaluate and direct effective legislative strategies;
 - Assess and prioritize public policy issues;
 - Negotiate complex and sensitive issues;
 - Effectively advocate the winegrape industry agenda;
 - Manage and direct numerous and various complex issues simultaneously;
 - Develop effective advocacy networks and build effective coalitions; maintain confidentiality.

2. Education, Training & Experience:

- Requires a bachelor's degree from a four year college or university.
- At least 5 years of experience in a responsible position that includes advocacy and/or management of public policy issues and processes. Relevant work experience may include work in California Legislature, state public agency, a trade association, consulting firm or other related organizations with an active interest in state public policy issues.
- Knowledge of state legislative and agency processes is necessary.
- Knowledge of wine, agriculture and/or natural resource issues is a plus, but not required.

3. Physical Demands:

- The work schedule for this position mirrors, but is not limited to, the work schedule of the California Legislature and will include attendance at political fundraisers, which often occur at evening hours. Hours of work may vary and include early mornings, late evenings and weekends.
- Work will involve driving, walking, standing, talking, hearing, and using hands to handle, feel or operate computer equipment and other objects, and reading printed material or content displayed on a computer, smartphone and other handheld or desktop devices. The Director is expected to provide onsite support at association events, which, in addition to the preceding requirements, may entail lifting and moving boxes and other material weighing up to 25 pounds.

COMPENSATION: CAWG offers a competitive salary and employment benefits. Compensation package includes full medical, vision and dental insurance, employer matching 401K plan, and paid time off. The annual salary for this position is dependent on experience.

CAWG is a dynamic organization that strives to offer continued growth for its staff members. Appropriate continued education and advancement when possible are encouraged. CAWG offers a work environment that fosters creativity, inspiration, initiative and productivity.

CAWG PROTECTS AND PROMOTES THE INTERESTS OF CALIFORNIA WINEGRAPE GROWERS BY PROVIDING
MEMBERS A UNIFIED VOICE, EFFECTIVE ADVOCACY AND STRONG LEADERSHIP.

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PHONE: 916 379 8995
FAX: 916 379 8999

EMAIL: info@cawg.org
WEBSITE: www.cawg.org

To APPLY: If interested in this position, then please submit your resume and cover letter to the California Association of Winegrape Growers at the email or postal address below. All expressions of interest should be received by no later than Monday, March 23, 2015.

Email: info@cawg.org

Mail: 1121 L Street, Suite 304, Sacramento, CA 95814

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FAX: 916 379 8999

EMAIL: info@cawg.org
WEBSITE: www.cawg.org

From: Bernhardt, David L.
Sent: Tuesday, March 17, 2015 3:52 PM
To: Jason Peltier
Subject: Re: Director of Government Relations

Thx

David Bernhardt

On Mar 17, 2015, at 6:49 PM, "Jason Peltier" <jpeltier@westlandswater.org> wrote:

From: Jean-Mari Peltier [<mailto:jmpeltier@ngwi.org>]
Sent: Tuesday, March 17, 2015 2:24 PM
To: Jason Peltier
Subject: FW: Director of Government Relations

[Great position for the right person](#)

From: John Aguirre [<mailto:john@cawg.org>]
Sent: Tuesday, March 17, 2015 11:31 AM
To: Jean-Mari Peltier (jmpeltier@ngwi.org)
Subject: Director of Government Relations

Jean Mari:

We are looking for a director of government relations. Please feel free to share the attached with any candidates you think may be qualified and interested in the position.

John
JOHN AGUIRRE | **California Association of Winegrape Growers** | President
1121 L Street, Suite 304 | Sacramento, CA 95814
916 379 8995 | 1 800 241 1800 | www.cawg.org |

<Position Descrip - Dir Govt Relations 2015.pdf>

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From: Tom Birmingham
Sent: Thursday, March 19, 2015 11:18 AM
To: 'Watts, John (Feinstein)'; 'Bernhardt, David L.'
Subject: RE: Suggested revision to section 102(a) from Emergency Projects section

John,

The proposed changes are acceptable to Westlands.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Tuesday, March 17, 2015 12:11 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: Suggested revision to section 102(a) from Emergency Projects section

In lieu of the call I asked for earlier today, we might be able to address the topic I wanted to raise through this email.

I have attached a proposed revision to the Emergency Projects subsection (a) that achieves two purposes: 1) it focuses only on changes in project operations, rather than new construction projects; and 2) it substantially condenses the text. Attached are both clean and redline versions of the proposed new text.

The reason to focus only on project operations rather than construction of new projects are the following:

- 1) Stuart Somach indicated that the language about offsetting any fiscal impacts in the “No Redirected Adverse Impacts” section was based on his concern that some water districts could see their O&M costs increased due to new construction authorized under subsection (a). The State and Interior (and this office, to be honest) have been worried about the potential ramifications of the no adverse fiscal impacts language, and I think we can drop that language if we remove the possibility of new construction projects being built under the bill. I think this will help us get broader agreement on the “No Redirected Adverse Impacts” language, which has been problematic.
- 2) I seriously doubt any new projects would actually have been built under the authority of subsection (a) in any event. All existing laws have to be followed, so I am not sure what is gained by it.

Do these changes look OK to you? If you have any concerns about them, happy to discuss on a call.

From: Tom Birmingham
Sent: Wednesday, March 25, 2015 9:19 AM
To: Kiel Weaver; Bernhardt, David L.
Subject: Fwd: Draft
Attachments: Draft Alternative Legislation.docx; Untitled attachment 00727.htm

Please do not distribute to anyone.

Sent from my iPhone

Begin forwarded message:

From: "Tom Birmingham" <tbirmingham@westlandswater.org>
Date: March 23, 2015 at 5:58:16 PM EDT
To: Brent Walthall <bwalthall@kcwa.com>
Subject: Fwd: Draft

Another try.

Sent from my iPhone

Begin forwarded message:

From: Tom Birmingham <tbirmingham@westlandswater.org>
Date: March 22, 2015 at 5:18:57 PM MDT
To: 'Brent Waltho' <bwalthll@kcwa.com>, thomas.gibson@resources.ca.gov, "'Gibson, Thomas@Wildlife'" <Thomas.Gibson@wildlife.ca.gov>
Subject: Draft

Brent and Tom,

Attached is a draft document that I prepared after our meeting yesterday. I believe it is consistent with the "Gibson's Thoughts" document. I also included some provisions out of the Feinstein bill that will benefit fish. I am sure this will need revision and further discussion. Is there some time late Tuesday when we can talk?

Again, thank you for taking time out of your Saturday to meet.

Tom

SEC. __. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta

(3) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

(4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon within the evolutionary significant unit (ESU) or distinct population segment (DPS).

(5) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

SEC. __. ENSURING THE PROTECTION OF LISTED SPECIES.

Nothing in this Act shall be deemed to authorize the Secretaries to take any action or actions that reduce appreciably the likelihood of both the survival and recovery of a federally listed species in the wild by reducing the reproduction, numbers or distribution of such species.

SEC. __. OPERATIONS UNDER BIOLOGICAL OPINIONS

Operating within the existing smelt biological opinion and the salmonid biological opinion; based on information and experience gained since the adoption of those biological opinions; and within the flexibility inherent in the Biological Opinions; the Secretaries shall direct or allow operations of the Central Valley Project and the State Water Project to provide the maximum supply of water possible under current hydrologic conditions.

SEC. ____ . MANAGEMENT OF REVERSE FLOW UNDER THE BIOLOGICAL OPINIONS

(a) In implementing the provisions of the smelt biological opinion and salmonid biological opinion, or any successor biological opinions, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall restrict export pumping rates to achieve reverse flow in Old and Middle Rivers no less negative than the maximum permitted under the pertinent biological opinion unless less negative reverse flow is reasonably required to avoid adverse impacts on species abundance beyond those considered under the smelt biological opinion.

(b) Any decision to restrict export pumping rates to achieve reverse flow in Old and Middle Rivers less negative than the maximum permitted under the smelt biological opinion shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the pertinent agency website.

SEC. ____ . INFLOW/EXPORT RATIO IN APRIL AND MAY

To encourage the acquisition of water to increase flow in the San Joaquin River for the benefit of out-migrating salmonid species, the Secretary of Commerce shall adopt a 1:1 inflow to export ratio for the increment of increased flow of the San Joaquin River, as measured as a 3-day running average at Vernalis during the period from April 1 through May 31, resulting from voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries, if the following conditions are met:

(A) a proposed sale, transfer, or exchange under this paragraph may only proceed if the Secretary of the Interior determines that the environmental effects of the proposed sale, transfer, or exchange are consistent with effects permissible under applicable law (including regulations);

(B) Delta conditions are suitable to allow movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights; and

(C) such voluntary sale, transfer or exchange of water results in flow that is in addition to flow that otherwise would occur in the absence of the sale, transfer or exchange such voluntary sale, transfer or exchange.

SEC. ____ . USE OF CVPIA RESTORATION FUND.

Not less than fifty percent of the Central Valley Project Restoration Fund payments collected south-of-Delta Central Valley Project water service contractors shall be used to implement projects to benefit listed fish species that rely on the Delta ecosystem during

all or part of their life stages. Projects funded pursuant to the paragraph shall be prioritized by the Secretary of the Interior in consultation with the Secretary of Commerce, the California Department of Fish and Wildlife, and the Pacific Fishery Management Council. Such funds shall be continuously appropriated.

SEC. ____ . PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) Establishment of Non-native Predator Fish Removal Program- The Assistant Administrator and districts, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, shall jointly develop and conduct a pilot non-native predator fish removal program to remove non-native striped bass, smallmouth bass, largemouth bass, black bass, and other non-native predator fishes from the Stanislaus River. The pilot program shall--

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing, which are among the most effective predator collection techniques that minimize effects to native anadromous fish;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and

(6) be implemented for a period of seven consecutive calendar years.

(b) Management- The management of the pilot program shall be the joint responsibility of the Assistant Administrator and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting and conduct of the pilot program.

(c) Conduct-

(1) IN GENERAL- At the election of the districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to NOAA Fisheries, or a combination thereof.

(2) **PARTICIPATION BY NOAA FISHERIES-** In the event the districts elect to conduct the program using their own personnel or qualified private contractors hired by them, the Assistant Administrator has the option to assign an employee of, on loan to, or otherwise assigned to NOAA Fisheries, to be present for all activities performed in the field. Such presence shall ensure compliance with the agreed upon elements specified in subsection (b). The districts shall pay 100 percent of the cost of such participation as specified in subsection (d).

(3) **TIMING OF ELECTION-** The districts shall notify the Assistant Administrator of their election on or before October 15 of each calendar year of the pilot program, which election shall apply to the work performed in the subsequent calendar year.

(d) **Funding-**

(1) **CONTRIBUTED FUNDS-** The Assistant Administrator is authorized to receive and expend contributed funds for the purposes for which the funds contributed in a like manner as if said sums had been specifically appropriated for said purposes.

(2) **ANNUAL FUNDING-** The districts shall be responsible through contributed funds for 100 percent of the cost of the pilot program. On or before December 1 of each year of the pilot program, the Assistant Administrator shall submit to the districts an estimate of the cost to be incurred by the NOAA Fisheries in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributed funds, or any other fund as directed by the Assistant Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(3) **ACCOUNTING-** On or before September 1 of each calendar year, the Assistant Administrator shall provide an accounting of the prior calendar year's expenses to the districts. If the estimate paid by the districts was less than the actual costs incurred by the NOAA Fisheries, the districts shall have until September 30 of that calendar year to pay the difference to the fund identified by the Assistant Administrator in subsection (d)(1), or NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled. If the estimate paid by the districts was greater than the actual costs incurred by the NOAA Fisheries, then a credit shall be provided to the districts, which shall be deducted from the estimate payment the districts must make for the work performed by the NOAA Fisheries, if any, in the next calendar year. Administrator, by the districts on or before December 31 of each year, (a) the NOAA Fisheries shall have no obligation to conduct the pilot program activities otherwise scheduled, and (b) the districts shall be prohibited from conducting any aspect of the pilot program, until full payment is made by the districts.

(e) **Reporting and Evaluation-**

(1) IN GENERAL- On or before the 15th day of each month, the Assistant Administrator shall post on the website of the NOAA Fisheries a tabular summary of the raw data collected in the prior month.

(2) REPORT- On or before June 30 of the calendar year following the completion of the program, the Assistant Administrator and districts shall jointly publish a peer reviewed report that--

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) Permits Process-

(1) Not later than 180 days after filing of an application Assistant Administrator and the districts, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act (16 U.S.C. 153(9)(a)(1)), for the performance of the pilot program.

(3) All permits issued shall be in the name of the NOAA Fisheries and the districts.

(4) Districts may delegate the authority to administer the permit authority to any qualified private contractor retained in accordance with subsection (c).

(5) The pilot program, including amendments thereto by the appropriate Federal and State agencies, shall constitute a conservation plan that complies with the requirements of section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)).

(g) NEPA.--Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to section 402 and the issuance of any permit under this subsection during the seven year period beginning on the date of the implementation of the pilot program.

(h) Emergency Environmental Reviews – To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with Section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this section.

(i) Definitions- For the purposes of this section:

(1) ASSISTANT ADMINISTRATOR- The term `Assistant Administrator' means the Assistant Administrator of National Oceanic and Atmospheric Administration, NOAA Fisheries

(2) DISTRICTS- The term `districts' means the Oakdale Irrigation District and the South San Joaquin Irrigation District.

(3) PILOT PROGRAM- The term `program' means the pilot non-native predator removal program established under this section.

(j) Sunset- The authorities provided under this section shall expire seven years after the implementation of the pilot program.

SEC. ____ CALFED INVASIVE SPECIES PILOT PROJECTS IN THE SACRAMENTO-SAN JOAQUIN BAY DELTA AND ITS TRIBUTARIES.

(a) FINDINGS.—Congress finds that—

(1) The Sacramento-San Joaquin Bay Delta and its Tributaries-

(A) is one of the largest and most diverse estuaries in the United States,

(B) is a natural treasure and a vital link in California's water system, and

(C) has native biodiversity important to the ecological and economic systems of California, including water deliveries to agriculture, municipalities and to the environment and fisheries industries, and

(D) has river tributaries important for rearing of salmon and steelhead smolts which experience a high level of predation from non-native species.

(2) Past, present and future introductions of invasive species are and will be a major factor in the decline of native pelagic and anadromous endangered or threatened species in the Sacramento–San Joaquin Bay Delta and its tributaries.

(3) More than 250 nonnative aquatic and plant species have been introduced into the Delta and its tributaries; of these, at least 185 species have become established and have altered the Sacramento-San Joaquin Bay Delta watershed's ecosystem.

(4) The Bay Delta Conservation Plan, the Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of the Central Valley Steelhead, the Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes, and the multiple 5 year reviews of those plans all highlight that introduced nonnative invasive species are a significant factor in the decline of native fish species. These nonnative species, which include invasive aquatic vegetation, predators, and competitors, directly or indirectly cause biological stress for pelagic and anadromous endangered or threatened fish species in the Sacramento-San Joaquin Bay-Delta and its tributaries.

(5) If threats by nonnative species to native fish species are not addressed, there is a probability that native species of the Sacramento-San Joaquin Bay-Delta watershed's pelagic and anadromous community will go extinct.

(6) The CALFED legislation (Public Law 108-361) authorized a program to prevent, control, and eradicate invasive species, but it has not been implemented to date.

(7) A focused pilot program needs to be conducted within the Delta and river tributaries to reduce threats to native listed species by nonnative species. Reducing nonnative stressors on native listed species will contribute to both native listed species recovery and lowering the impact on downstream water users as those native listed species recover.

(b) PILOT PROJECTS TO IMPLEMENT CALFED INVASIVE SPECIES PROGRAM.

(1) Not later than January 1, 2017, the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall begin pilot projects to implement the invasive species program, including prevention, control and eradication authorized pursuant to Section 103(d)(6)(A)(iv) of Public Law 108-361. The pilot projects shall:

(A) seek to reduce invasive aquatic vegetation, predators, and other competitors which are major factors in the decline of native listed pelagic and anadromous species that occupy the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Bay-Delta; and

(B) address how to remove, reduce, or control the effects of species including: Asiatic clams, silversides, gobies, Brazilian water weed, largemouth bass, smallmouth bass, striped bass, crappie, bluegill, white and channel catfish, and brown bullheads.

(2) The Secretary of the Interior's efforts, in consultation with the Secretary of Commerce, shall consist of the following phases:

(A) Phase 1. The Secretary of the Interior shall convene a panel of experts, including experts recommended by the State of California, to:

- (i) Identify the non-native species having the greatest impact on the viability of native pelagic and anadromous native listed species; and
- (ii) Identify the non-native species for which actions to reduce or control the population is determined to be possible; and
- (iii) Design a study to reduce the non-native species identified in clauses (i) and (ii) and prepare a cost estimate to implement this study.

(B) Phase 2. The Secretary of the Interior, in consultation with the Secretary of Commerce, shall test the general viability of nonnative reduction methods, including either direct predator removal or alteration of channel conditions, or some combination thereof, through pilot projects at multiple sites in addition to the projects on the Stanislaus River pursuant to Section 204, including known hotspots of predator aggregation or activity, such as:

- (i) Clifton Court Forebay,
- (ii) Central Valley Project intakes,
- (iii) Head of Old River,

- (iv) Georgiana Slough,
- (v) Old and Middle Rivers,
- (vi) Franks Tract,
- (vii) Paintersville Bridge,
- (viii) individual river tributaries important for wild populations of anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (ix) Human-made submerged structures, and
- (x) Salvage release sites.

(C) Phase 3. If determined to be effective, the Secretary of the Interior, and the Secretary of Commerce, shall implement nonnative reduction methods at a larger number of sites, incorporating information learned during the first and second phase.

(3) The Secretary of the Interior shall collect data associated with the implementation of the projects above, and shall specifically collect data on the impact on

- (A) pelagic and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973,
- (B) water quality, and
- (C) water supply.

(4) After assessing the data described in subparagraph (2), the Secretary of the Interior, in collaboration with the Secretary of Commerce and the Director of the California Department of Fish and Wildlife, shall, if appropriate, annually recommend revisions to the reasonable and prudent alternatives contained in the salmonid biological opinion and the smelt biological opinion, or other administrative federal requirements governing the operation of the Central Valley Project and the State Water Project, that are likely to produce additional fishery, water quality, and water supply benefits.

(5) After the pilot projects are complete, a report describing the results of the program shall be used by the Assistant Administrator in making the survival estimates required by Section 203(f).

(c) IMPLEMENTATION. The Secretary of the Interior shall implement the CALFED program described in subpart (b) for at least a period of seven consecutive years beginning on the date of implementation.

(d) REPORTING REQUIREMENTS. The Secretary of the Interior shall provide reports to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources on the following:

(1) No later than January 1, 2016, a description of the projects described in subpart (b), including the application for all necessary scientific research and species enhancement permits under section 10(a) (1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)), and for the performance of the CALFED invasive species Program.

(2) Upon the completion of Phase 1 as described in subsection (b)(1)(A), a report describing its implementation and cost effectiveness.

(3) Two years after the project begins, a report describing the progress of the eradication of the nonnative species in the Sacramento-San Joaquin Bay-Delta and its tributaries and how such efforts have helped the Recovery Plans for endangered and threatened Anadromous and Pelagic Species in the Sacramento-San Joaquin Bay-Delta watershed and the associated cost effectiveness of each control measure.

(4) After the pilot projects are complete, a report describing the results of the program, including recommendations on whether the program should be continued, how the program may be taken to full scale in the most cost effective manner, and how a mitigation program for the Central Valley Project allowable under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) could be implemented.

(e) EMERGENCY ENVIRONMENTAL REVIEWS. To expedite this environmentally beneficial program for the conservation of threatened and endangered species, the Secretary of the Interior shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 for this program.

SEC. ____ . EXPEDITING WATER TRANSFERS.

(a). The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

(1) this Act;

(2) any other applicable provision of the reclamation laws; and

(3) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

(b). To the extent feasible, transfers of Central Valley Project water shall be carried out to provide incidental benefit to listed salmonid species.

SEC. ____ . OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts.—Congress finds that operations of the Central Valley Project and State Water Project pursuant to the provisions of this Act will be consistent with the smelt biological opinion and the salmonid biological opinion. The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in

connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) Additional Yield.--If, as a result of the application of this Act, the California Department of Fish and Wildlife requires take authorization under section 2081 of the California Fish and Game Code for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a consequence of the Department's action, Central Valley Project yield is greater than it would have been absent the Department's actions, then that additional yield shall be made available by the Central Valley Project to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department's action.

(c) Notification Related to Environmental Protections.--The Secretary of the Interior shall immediately notify the Director of the California Department of Fish and Wildlife in writing if the Secretary of the Interior determines that implementation of the smelt biological opinion and the salmonid biological opinion consistent with this Act reduces environmental protections for any listed fish species covered by the opinions.

From: Petersen, Scott

Sent: Thursday, March 26, 2015 8:18 AM

To: Dennis Cardoza (dcardoza@foley.com); Costa, Jim; tbirmingham@westlandswater.org

CC: David Bernhardt

Subject: NorCal Dem Meeting w/ Enviro

This morning, Rep. Thompson called a meeting with the enviro community at 8:30 am ET regarding "rumors of drought legislation". According to a source I have within the room, the Members in attendance were Huffman, Thompson and Garamendi, with staff from other NorCal Dem delegation Members present, including Matsui and McNerney for certain. The message from the Members to the enviros was that no drought bill is needed and this bill that's being developed needs to be sunk in the Senate. They also requested that enviros find and give them language from the new bill.

An interesting sidebar is that all organizations in attendance are affiliated with Hal Candee. We know Hal has the language, the question is now whether he will try to use his clients to distribute the language to the NorCal delegation through a third party. My source indicated that Hal is attempting to organize the enviro groups behind the scenes, seemingly for Huffman. The specific enviro groups in attendance were The Nature Conservancy, Ducks Unlimited, Earth Justice and Audubon.

J. Scott Petersen, P.E.

Deputy Chief of Staff/Legislative Director

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

From: DCardoza@foley.com
Sent: Thursday, March 26, 2015 8:55 AM
To: Costa, Jim
CC: Petersen, Scott; tbirmingham@westlandswater.org; David Bernhardt
Subject: Re: NorCal Dem Meeting w/ Enviro

Not from me but I told her Scott had a great outreach plan and offered to help in any way. Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On Mar 26, 2015, at 11:39 AM, Costa, Jim <[REDACTED]@[REDACTED]><[mailto:\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])> wrote:

Does John Watt & Jennifer Duck have this info ??? Jim

Sent from my iPhone

On Mar 26, 2015, at 11:17 AM, Petersen, Scott <Scott.Petersen@mail.house.gov<<mailto:Scott.Petersen@mail.house.gov>>> wrote:

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J. Scott Petersen, P.E.
Deputy Chief of Staff/Legislative Director
Rep. Jim Costa (CA-16)

1314 Longworth House Office Building
Washington, DC 20515
(202) 225-3341

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From: Petersen, Scott
Sent: Thursday, March 26, 2015 8:59 AM
To: 'DCardoza@foley.com'; Costa, Jim
CC: tbirmingham@westlandswater.org; David Bernhardt
Subject: RE: NorCal Dem Meeting w/ Enviro

Yes, Jennifer has that info. The outreach plan is with David and I and under development.

J. Scott Petersen, P.E.
Deputy Chief of Staff/Legislative Director
Rep. Jim Costa (CA-16)

-----Original Message-----

From: DCardoza@foley.com [<mailto:DCardoza@foley.com>]
Sent: Thursday, March 26, 2015 11:55 AM
To: Costa, Jim
Cc: Petersen, Scott; tbirmingham@westlandswater.org; David Bernhardt
Subject: Re: NorCal Dem Meeting w/ Enviro

Not from me but I told her Scott had a great outreach plan and offered to help in any way. Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

On Mar 26, 2015, at 11:39 AM, Costa, Jim <[REDACTED]@[REDACTED]> <[mailto:\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])> wrote:

Does John Watt & Jennifer Duck have this info ??? Jim

Sent from my iPhone

On Mar 26, 2015, at 11:17 AM, Petersen, Scott <Scott.Petersen@mail.house.gov> <<mailto:Scott.Petersen@mail.house.gov>>> wrote:

This morning, Rep. Thompson called a meeting with the enviro community at 8:30 am ET regarding "rumors of drought legislation". According to a source I have within the room, the Members in attendance were Huffman, Thompson and Garamendi,

with staff from other NorCal Dem delegation Members present, including Matsui and McNerney for certain. The message from the Members to the enviros was that no drought bill is needed and this bill that's being developed needs to be sunk in the Senate. They also requested that enviros find and give them language from the new bill.

An interesting sidebar is that all organizations in attendance are affiliated with Hal Candee. We know Hal has the language, the question is now whether he will try to use his clients to distribute the language to the NorCal delegation through a third party. My source indicated that Hal is attempting to organize the enviro groups behind the scenes, seemingly for Huffman. The specific enviro groups in attendance were The Nature Conservancy, Ducks Unlimited, Earth Justice and Audubon.

J. Scott Petersen, P.E.
Deputy Chief of Staff/Legislative Director Rep. Jim Costa (CA-16)
1314 Longworth House Office Building
Washington, DC 20515
(202) 225-3341

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From: Bernhardt, David L.
Sent: Friday, March 27, 2015 10:32 AM
To: 'dperacchi@westlandswater.org'
Subject: Phone number

Mr. Peracchi: It was great to see visit with you this week. When you get a chance could you send me the best contact phone number for you for scheduling purposes?

David

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From: Don Peracchi
Sent: Friday, March 27, 2015 3:19 PM
To: Bernhardt, David L.
Subject: Re: Phone number

Mobile, 559-██████████. Home , 559-██████████. Look forward to talking to you soon. Don

Sent from my iPhone

On Mar 27, 2015, at 10:32 AM, "Bernhardt, David L." <DBernhardt@BHFS.com> wrote:

Mr. Peracchi: It was great to see visit with you this week. When you get a chance could you send me the best contact phone number for you for scheduling purposes?

David

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From: Bernhardt, David L.
Sent: Friday, March 27, 2015 3:54 PM
To: Don Peracchi
Subject: Re: Phone number

Thanks Don.

██████████

On Mar 27, 2015, at 6:18 PM, Don Peracchi <dperacchi@westlandswater.org> wrote:

Mobile, 559-████-████ Home , 559-████-████ Look forward to talking to you soon. Don

Sent from my iPhone

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From: Petersen, Scott
Sent: Monday, March 30, 2015 9:10 AM
To: Costa, Jim; Thomas Birmingham
CC: David Longly Bernhardt; Dennis Cardoza; Lopez, Juan; Zamora, Dianna
Subject: Fwd: Strategy Document
Attachments: 2015-03-25MEMO.OutreachStrategy_SPDBedits.docx (1).docx; ATT00001.htm

Good morning all, apparently the strategy document got stuck in my outbox on Friday. The updated and revised document is attached to this email for your review and comment.

Best, Scott

Sent from my iPhone, with brevity...

Begin forwarded message:

From: "J. Scott Petersen" <[REDACTED]@[REDACTED]>
Date: March 30, 2015 at 9:03:14 AM PDT
To: "scott.petersen@mail.house.gov" <scott.petersen@mail.house.gov>
Subject: Strategy Document

CONFIDENTIAL STAFF DRAFT

MEMO

To: Jim Costa
From: Scott Petersen
Date: March 25, 2015
Subject: Drought bill Introduction Strategy

In order to generate enough support statewide to enact drought legislation over the opposition of the Northern California Democratic delegation and likely active engagement from Leader Pelosi, efforts should be made to develop support from a diverse coalition of outside stakeholder organizations, media outlets, political leaders and state and federal agency officials. Given my understanding of the timing of introduction, outreach will need to be performed in conjunction with the development of the final bill, and will need to begin the week of March 30, 2015.

Outreach Plan

Gov. Jerry Brown

Governor Brown must be committed to supporting federal legislation as a means to an end to accomplish his own goals, as well as the Senator's goals. Rep. Costa will be meeting with the Governor's team, Nancy McFadden and Karla Nemeth, on April 1, 2015, to discuss the legislation and longer term fixes. Follow up on April 6, 2015, by Senator Feinstein with a hard ask for support, detailing any support garnered from other Democratic Members of the House and California legislature.

- Members of California Congressional Delegation
- Members of the State Legislature
- Local Elected Officials

Outside Stakeholder Organizations

Any meetings that need to set up with NGOS, Agriculture Groups, Water Agencies (ACWA, SLDMWA, Met and GCID to coordinate), business groups, energy stakeholders, public Health Organizations should be set up to occur over the next two weeks, and I am happy to assist with the effort of pulling meetings together. I've generated an initial list of agricultural groups with associated contact information to begin weekly outreach calls to coordinate a response strategy to the inevitable attacks from opposition groups.

CONFIDENTIAL STAFF DRAFT

Media Outlets

Editorial Boards

Newspaper	Responsible Party	Timeline
Fresno Bee	Feinstein/Costa	April 1
Los Angeles Times	Feinstein/Costa/Cardenas	April 3
Sacramento Bee	Feinstein/Costa	April 5
San Diego Tribune	Feinstein/Vargas	April 5
San Francisco Chronicle	Feinstein/Farr	April 8
San Jose Mercury	Feinstein/Farr	April 8
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Outreach Plan

In order to generate additional support for the measure, outreach should be performed to the following groups:

- Members of Congress from California
- Members of the California State Legislature

CONFIDENTIAL STAFF DRAFT

California Democratic Member of Congress

Members of the California Democratic delegation will be willing to support the Senator's efforts if she and her allies are able to engage them and show them that the legislation is necessary to address the ongoing drought conditions. Support from Members in Southern California will be crucial to offset the opposition of the Northern California delegation. The suggested lead in Southern California is Rep. Tony Cardenas, with Rep. Juan Vargas in a second position in the Southern California delegation. Engagement by the Senator directly with Members will be critical in generating support amongst the delegation.

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John Garamendi	1. Rep. Costa	
Jackie Speier		
Eric Swalwell	1. Dennis Cardoza 2. Rep. Costa 3. Senator Feinstein	
Mike Honda		
Zoe Lofgren	1. Senator Feinstein 2. Rep. Costa	
Sam Farr	1. Senator Feinstein 2. Rep. Costa	Cosponsored S.2169 in 113th
Lois Capps		
Julia Brownley	1. Senator Feinstein 2. Rep. Cardenas 3. Rep. Costa	
Judy Chu		
Adam Schiff	1. Dennis Cardoza 2. Metropolitan Water District 3. Senator Feinstein 4. Rep. Costa	
Tony Cardenas	1. Rep. Costa 2. Senator Feinstein 3. Maria Gutierrez 4. Dennis Cardoza	Cosponsored S.2169 in 113th
Brad Sherman		
Pete Aguilar	1. Rep. Cardenas 2. Rep. Costa 3. Senator Feinstein	

CONFIDENTIAL STAFF DRAFT

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Ted Lieu	1. Rep. Cardenas 2. Rep. Costa 3. Senator Feinstein	
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Raul Ruiz	1. Rep. Costa 2. Metropolitan Water District 3. Maria Gutierrez 4. Senator Feinstein	
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Metropolitan Water District and San Diego Water Authority should take the lead on targeting Members of Congress in their service area and will perform initial outreach by a “Water 101” clinic during the recess.

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CONFIDENTIAL STAFF DRAFT

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CC: Dennis Cardoza; Lopez, Juan; Zamora, Dianna
Subject: RE: Strategy Document
Attachments: 2015-03-25MEMO OutreachStrategy_SPDBedits docx (1) (2).docx

Scott: I have modified one heading for clarity.

David

From: Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]
Sent: Monday, March 30, 2015 12:10 PM
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Cc: Bernhardt, David L.; Dennis Cardoza; Lopez, Juan; Zamora, Dianna
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Federal Agencies

Department of the Interior

- Bureau of Reclamation
- Fish and Wildlife Service

State of California Agencies

Department of Natural Resources

California Department of Food and Agriculture

From: Petra Perez

Sent: Monday, March 30, 2015 4:54 PM

To: Petra Perez

CC: Carmela McHenry; Tammy Hodgkin

Subject: KP Water News - March 30, 2015

Attachments: Water articles 3-30-15.docx

March 30, 2015

SUMMARY OF ARTICLES:

USA TODAY	California snowpack at lowest level on record
THE DAILY BEAST	WATER HOGS: How Growers Gamed California's Drought
NBC NEWS	California Farmers Near 'Survival Mode' as Drought Drags On
SAN DIEGO UNION-TRIBUNE	Legislators not wasting a serious drought
CAPITAL PRESS	Report calls for better data to plan for droughts
LOS ANGELES TIMES	Gov. Jerry Brown OKs \$1 billion to tackle drought, other water issues
THE FRESNO BUSINESS JOURNAL	Rep. Nunes chief of staff leaves for Westlands job
WATCHDOG.ORG	California's government-induced "drought" will send national food prices skyrocketing
THE PORTERVILLE RECORDER	Farmers hope to survive another year
THE PORTERVILLE RECORDER	Citrus growers facing a tough year
THE MODESTO BEE	TID staff urges 18-inch cap on water
THE MODESTO BEE	So, why are those Stanislaus County canals filled with water?
CENTRAL VALLEY BUSINESS TIMES	How baseball trades are like water transfers
IMPERIAL VALLEY NEWS	'Refuge' for the endangered Delta smelt
THE PRESS DEMOCRAT	California agriculture industry could lose \$1 billion in two years because of drought
DAILY PRESS	Survey: Drought as critical as jobs to Californians
THE SACRAMENTO BEE	Drought threatens American River fish
THE FRESNO BEE	Jerry Brown signs drought relief package
THE FRESNO BEE	Westlands Water District hires Rep. Devin Nunes' top aide
SAN FRANCISCO CHRONICLE	California drought: Sierra Nevada snowpack hits historic low
ENSIA	How one California farmer is battling the worst drought in 1,200 years
THE GUARDIAN	Groundwater records should not be kept confidential in drought-stricken California
CHICO ENTERPRISE-RECORD	Billion-dollar water bills signed by governor more about flood than drought
CHICO ENTERPRISE-RECORD	Farmers gather at UC Davis to talk about drought
E&E DAILY	DROUGHT: S. Calif. water district exerts heavy influence on legislative negotiations
DELTA FARM PRESS	How might the California drought impact Southern agriculture?

OPINION/COMMENTARY

THE NEW YORK TIMES	Preparing for Tomorrow's Storms
THE SACRAMENTO BEE	Where to store water? Above ground or below ground?
THE MODESTO BEE	Irrigation districts: State could derail delicate Stanislaus water deal
LOS ANGELES DAILY NEWS	California's leaders need to step up to fight drought
THE MALIBU TIMES	Water, Water Everywhere ... or Nowhere

BLOGS

SF CHRON BLOG – SMELL THE TRUTH	Is pot causing the California drought?
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SCIENTIFIC AMERICAN

Keeping Tiny Delta Smelt Alive in Captivity Is No Small Feat

CIRCLE OF BLUE

California Drought Is Not Lifting

CENTRAL VALLEY INDYMEDIA

Westlands Water District hires Rep. Nunes' chief of staff

Petra Pérez

KP PUBLIC AFFAIRS

1201 K Street, Suite 800, Sacramento, CA 95814
p. 916.448-2162 d. 916.498.7735 f. 916.448.4923
w. www.ka-pow.com e. pperez@ka-pow.com



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"CNTL + CLICK" THE HEADLINE TO JUMP TO ARTICLE BELOW

March 30, 2015

SUMMARY OF ARTICLES:

USA TODAY	<u>California snowpack at lowest level on record</u>
THE DAILY BEAST	<u>WATER HOGS: How Growers Gamed California's Drought</u>
NBC NEWS	<u>California Farmers Near 'Survival Mode' as Drought Drags On</u>
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SF CHRON BLOG – SMELL THE	<u>Is pot causing the California drought?</u>
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ARTICLES:

USA TODAY

California snowpack at lowest level on record

[Doyle Rice](#), USA TODAY 5:46 p.m. EDT March 30, 2015

California's snowpack is at historically low levels, a casualty of the state's wimpy winter and ongoing drought.

In Northern California, the Sierra Nevada snowpack's water content is at its lowest late-March level since records began in 1950, at just 8% of the historical late-March average, the California Department of Water Resources said.

The snow's water content is a key measurement for water resource managers, since it measures the amount that will trickle into the state's reservoirs once it melts later in the spring.

More than 98% of the state of California remains in some level of drought, according to the most recent U.S. Drought Monitor, a website that tracks drought across the country. The drought has been exacerbated by the state's warmest winter on record.

A manual snow survey will be this Wednesday April 1 in the Sierra, about 90 miles east of Sacramento. Normally, snowpack is at its peak on April 1.

THE DAILY BEAST

WATER HOGS: How Growers Gamed California's Drought

Consuming 80 percent of California's developed water but accounting for only 2 percent of the state's GDP, agriculture thrives while everyone else is parched.

[Mark Hertsgaard](#)

03.30.15

"I've been smiling all the way to the bank," said pistachio farmer John Dean at a conference hosted this month by Paramount Farms, the mega-operation owned by Stewart Resnick, a Beverly Hills billionaire known for his sprawling agricultural holdings, controversial water dealings, and millions of dollars in [campaign contributions](#) to high-powered California politicians including Governor Jerry Brown, former governors Arnold Schwarzenegger and Gray Davis, and U.S. Senator Dianne Feinstein.

The [record drought](#) now entering its fourth year in California has alarmed the public, left a number of rural communities without drinking water, and triggered calls for mandatory rationing. There's no relief in sight: The winter rainy season,

which was a bust again this year, officially ends on April 15. Nevertheless, some large-scale farmers are enjoying extraordinary profits despite the drought, thanks in part to infusions of what experts call dangerously under-priced water.

Resnick, whose legendary marketing flair included hiring Stephen Colbert to star in a 2014 Super Bowl commercial, told the conference that [pistachios](#) generated an average net return of \$3,519 per acre in 2014, based on a record wholesale price of \$3.53 a pound. Almonds, an even “thirstier” crop, averaged \$1,431 per acre. Andy Anzaldo, a vice president for Resnick’s company, Wonderful Pistachios, celebrated by showing the assembled growers a clip from the movie *Jerry Maguire* in which Tom Cruise shouts, “Show me the money,” reported the *Western Farm Press*, a trade publication. At the end of the day, conference attendees filed out to the sounds of Louis Armstrong singing, “It’s a Wonderful World.”

Agriculture is the heart of California’s worsening water crisis, and the stakes extend far beyond the state’s borders. Not only is California the world’s eighth largest economy, it is an agricultural superpower. It produces roughly half of all the fruits, nuts, and vegetables consumed in the United States—and more than 90 percent of the almonds, tomatoes, strawberries, broccoli and other specialty crops—while exporting vast amounts to China and other overseas customers.

But agriculture consumes a staggering 80 percent of California’s developed water, even as it accounts for only 2 percent of the state’s gross domestic product. Most crops and livestock are produced in the Central Valley, which is, geologically speaking, a desert. The soil is very fertile but crops there can thrive only if massive amounts of irrigation water are applied.

Current pricing structures enrich a handful of interests, but they are ushering the state as a whole toward a parched and perilous future.

Although no secret, agriculture’s 80 percent share of state water use is rarely mentioned in media discussions of California’s drought. Instead, news coverage concentrates on the drought’s implications for people in cities and suburbs, which is where most journalists and their audiences live. Thus recent headlines warned that state regulators have ordered restaurants to serve water only if customers explicitly request it and directed homeowners to water lawns no more than twice a week. The *San Jose Mercury News* pointed out that these restrictions carry no enforcement mechanisms, but what makes them a sideshow is simple math: During a historic drought, surely the sector that’s responsible for 80 percent of water consumption—agriculture—should be the main focus of public attention and policy.

The other great unmentionable of California’s water crisis is that water is still priced more cheaply than it should be, which encourages over-consumption. “Water in California is still relatively inexpensive,” Heather Cooley, director of the water program at the world-renowned Pacific Institute in Oakland, told The Daily Beast.

One reason is that much of the state’s water is provided by federal and state agencies at prices that taxpayers subsidize. A second factor that encourages waste is the “use it or lose it” feature in California’s arcane system of water rights. Under current rules, if a property owner does not use all the water to which he is legally entitled, he relinquishes his future rights to the unused water, which may then get allocated to the next farmer in line.

Lawmakers have begun, gingerly, to reform the water system, but experts say that much remains to be done. For years, California was the only state in the arid West that set no limits on how much groundwater a property owner could extract from a private well. Thus nearly everyone and their neighbors in the Central Valley have been drilling deeper and deeper wells in recent years, seeking to offset reductions in state and federal water deliveries. This agricultural version of an arms race not only favors big corporate enterprises over smaller farmers, it threatens to collapse the aquifers whose groundwater is keeping California alive during this drought and will be needed to endure future droughts. (Groundwater supplies about 40 percent of the state’s water in years of normal precipitation but closer to 60 percent in dry years.)

Last fall, the legislature passed and Governor Brown signed a bill to regulate groundwater extraction. But the political touchiness of the issue—agricultural interests lobbied hard against it—resulted in a leisurely implementation timetable. Although communities must complete plans for sustainable water management by 2020, not until 2040 must sustainability actually be achieved. The Central Valley could be a dust bowl by then under current trends.

There are practical solutions to California's drought, but the lack of realistic water prices and other incentives has slowed their adoption. A shift to more efficient irrigation methods could reduce agricultural water use by 22 percent, an amount equivalent to all the surface water Central Valley farmers lacked because of drought last year, according to an analysis that Cooley of the Pacific Institute co-authored with Robert Wilkinson, a professor at the University of California Santa Barbara, and Kate Poole, a senior attorney at the Natural Resources Defense Council.

The Brown administration has endorsed better water efficiency—and put a small amount of money where its mouth is. Conservation is the No. 1 priority in the governor's Water Action Plan, and the drought measures he advanced in 2014 included \$10 million to help farmers implement more efficient water management. An additional \$10 million was allocated as part of the \$1.1 billion drought spending plan Brown and bipartisan legislators unveiled last week. Already more than 50 percent of California's farmers use drip or micro irrigation, said Steve Lyle, the director of public affairs at the California Department of Food and Agriculture; the new monies will encourage further adoptions.

Meanwhile, underpriced water has enabled continued production of such water-intensive crops as alfalfa, much of which is exported to China. Rice, perhaps the thirstiest of major crops, saw its production area decrease by 25 percent in 2014. But pasture grass, which is used to fatten livestock, and many nut and fruit products have seen their acreage actually increase. Resnick told the Paramount Farms conference that the acreage devoted to pistachios had grown by 118 percent over the last 10 years; for almonds and walnuts the growth rates were 47 and 30 percent, respectively.

One striking aspect of California's water emergency is how few voices in positions of authority have been willing to state the obvious. To plant increasing amounts of water-intensive crops in a desert would be questionable in the best of times. To continue doing so in the middle of a historic drought, even as scientists warn that climate change will increase the frequency and severity of future droughts, seems nothing less than reckless.

Yet even a politician as gutsy and scientifically informed as Jerry Brown tiptoes around such questions. The Daily Beast asked Brown if in this time of record drought California should begin pricing water more realistically and discouraging water-intensive crops. Responding on the governor's behalf, spokesman Lyle simply skipped the water pricing question. On crop choices, he cited a reply Brown recently offered to a similar query: "Growing a walnut or an almond takes water, having a new house with a bunch of toilets and showers takes water. So how do we balance use efficiency with the kind of life that people want in California? ... We're all going to have to pull together."

"California Has One Year of Water Left, Will You Ration Now?" asked the headline of a widely discussed opinion piece NASA scientist Jay Famiglietti published in the *Los Angeles Times* on March 16. The headline overstated the situation somewhat, and editors soon corrected it to clarify that California has one remaining year of *stored* water, not one year of total water. As Famiglietti was careful to state, California's reservoirs today contain enough water to supply a year of average consumption.

So if California endures a fourth year of drought, the only way to keep household taps and farmers' irrigation lines flowing will be to summon to the surface still greater volumes of groundwater. But that strategy can't work forever; worse, the longer it is pursued, the bigger the risk that it collapses aquifers, rendering them irretrievably barren. Aquifers can be replenished—if rainwater and snowmelt are allowed to sink into the ground and humans don't keep raiding the supply—and that is the expressed goal of California's forthcoming groundwater regulations. The process takes many decades, however, and extended relief from further droughts.

California is caught between the lessons of its history and the habits of its political economy. Droughts of 10 years duration and longer have been a recurring feature in the region for thousands of years, yet a modern capitalist economy values a given commodity only as much as the price of that commodity. Current pricing structures enrich a handful of interests, but they are ushering the state as a whole toward a parched and perilous future.

The price of water, however, is not determined by inalterable market forces; it is primarily a function of government policies and the social forces that shape them. Elected officials may dodge the question for now, but the price of water seems destined to become an unavoidable issue in California politics. "As our water supply gets more variable and scarce in the future, we're going to have to look at how we price water so it gets used more efficiently," said Cooley of the Pacific Institute. "In some ways we've come a long way in California's water policy and practices over the past 20 years. But if you look into a future of climate change and continued [economic] development, we can and need to do much better."

Mark Hertsgaard has reported on politics, culture and the environment from more than 20 countries and has authored six books, including HOT: Living Through the Next Fifty Years on Earth, which will appear in paperback April 17.

NBC NEWS

California Drought 66 STORIES

<http://www.nbcnews.com/storyline/california-drought/california-farmers-near-survival-mode-drought-drags-n332566>

STORYLINE: Ongoing coverage of the severe drought in California, and its affect on agriculture, food prices and water supply.

California Farmers Near 'Survival Mode' as Drought Drags On

By Heesun Wee

For farmers in parched California, it's water allocation time. An annual rite of spring, the state's water authority monitors winter storm runoff and sets water deliveries for customers. Those regional water allotments are cut into chunks and trickle down to small farmers like Mike DeWit, a second-generation rice farmer in Northern California. He proudly grows a medium-grain variety that once cooked is soft, sticky and holds its shape when molded—perfect for sushi rice.

If you like sushi, there's a good chance you've eaten rice grown by DeWit or his fellow farmers in the Sacramento Valley, the northern end of the Central Valley. About 97 percent of California's entire rice crop is produced in the Sacramento Valley, where the heavy clay-like soil and long warm summer days nurture high-quality medium-grain rice.

Rice planting will begin in earnest in April. For now DeWit is waiting for his final water allocation numbers, but he knows they will be low. California is stepping into year four of drought, and a second year of severe water restrictions for farmers. Residents can't use hoses to wash cars without shutoff nozzles. Restaurants can only serve water to customers who ask for it. Farmers are reducing acreage and installing more efficient irrigation systems to conserve water. Rice grows submerged in water, so successful rice farming boils down to savvy water management.

Farmers planting less acreage

In 2013, DeWit farmed about 1,050 acres. This year, he'll farm between 350 and 380 acres—that's down as much as 66.7 percent in just two years. "We know there's going to be water cutbacks," DeWit said. "I know there's going to be less acreage."

Economists and researchers so far haven't hit the panic button, and aren't forecasting a widespread spike in consumer food prices. That's in part because of crop diversity. If there's a significant drop in California-grown rice for example, rice farmers in the South might shift some production to fill the gap.

But everyone knows mountain snowpack levels are low, and many farmers are already hunkering down for another year of water cutbacks. Vast tracts of farmland have been fallowed, which basically means idling cropland to accumulate moisture. Some communities have been short on drinking water.

Winter storms in December and February did help fill major state reservoirs. But most Northern California reservoirs remain below historical levels for this time of year, according to the California Department of Water Resources.

The drought's reach has gripped DeWit and other farmers, and is triggering a cascading effect in the agricultural community. Less water and acreage means "I'm not buying as much fuel, as much fertilizer," DeWit said.

"I'm not renting another tractor. I had to lay off the driver," he said. Rice mills at the end of the supply chain might process less product. "The ripple effect is a bigger problem for the state."

At 48, DeWit knows a lot about the land and he's eager to expand his farming skills to the next level. But without water, his hands are essentially tied. "It's frustrating," he said. "I'm almost in survival mode."

And, oh yeah, it's barely spring. It will only get hotter and drier.

\$1 billion in emergency relief

Facing another year of extreme weather conditions, California Gov. [Jerry Brown](#) in mid-March announced a \$1 billion emergency drought package. The relief includes funding for safe drinking water and water recycling efforts. Brown is calling on all Californians to cut water use by 20 percent.

It's still early in 2015 and researchers are calculating the potential impact of this year's drought. Based on data so far, the 2015 California drought could cost roughly \$3 billion, compared to \$2 billion last year, said Richard Howitt, an agriculture and resource economics expert at the University of California, Davis. This year's drought could also cost more than 20,000 jobs, including in agriculture and food production, said Howitt.

Other economists peg the state's drought impact so far at around \$5 billion. Sectors that will be hit significantly include agriculture and food processing, said Troy Walters, a senior economist at IHS. Beyond those two categories, the impact will be minimal in the near term. "We're not going to see any food inflation into 2015 beyond normal as a result of the water situation," Walters said.

Looking at some California crops specifically, 2015 regional hay prices may not soften as they are expected to in the rest of the country. There's a good chance there will be less rice acreage overall. And tree nuts, including almonds, will feel more of the drought's impact, said Brandon Kliethermes, a senior economist at IHS. Older, less efficient nut trees are being destroyed.

Water rights for \$700 an acre-foot

With so much uncertainty and water reservoirs down, some farmers are idling land and making more money selling water than planting rice. Some are selling water to Southern California—in a modern-day twist on "[Chinatown](#)." The

1974 film, starring Jack Nicholson, depicts the struggle over lucrative water rights. Some Southern California water consumers are offering to pay as much as \$700 per acre-foot this year compared to under \$300 for the same amount about four years ago, [NBC News](#) has reported. (An acre-foot is roughly 325,000 gallons of water. Just imagine a swimming pool that's an acre across and a foot deep.)

Soaring water prices are a never-ending source of gossip at virtually every local water board meeting up and down the state. "We're like eighth-grade girls," gabbing about water prices, said rice farmer DeWit.

A land tenant, DeWit does not own the acreage he occupies, which means it's not his call to sell water. A typical rice crop requires about 3 acres and change. So if landowners sell water rights for \$700 an acre-foot, for example, that means around \$2,000 in their pockets. "I can't come near that in paying rent," DeWit said. "I can't blame a landowner for selling their water."

The water market is fetching top dollar amid low inventory. The state water agency, the California Department of Water Resources, is on track this year to allocate a mere 20 percent of the requested 4.2 million acre-feet of water for its 22 million residential consumers and 700,000 agricultural customers.

Is a 'megadrought' coming?

Toby Ault is a climate scientist at Cornell University. He studies infrequent but consequential weather events like major droughts. Using supercomputers, Ault and other NASA researchers including Ben Cook studied tree rings going back 1,000 years, and compared those records with soil moisture data from 17 different global climate models to peer into the future.

Their conclusion? A drier world due to rising temperatures from human-induced climate change. By the end of the 21st century, the American Southwest and Great Plains are likely to experience longer and more severe droughts than at any other time during the past 1,000 years, according to research published in February.

Unless greenhouse gas emissions are reined in, climate change could trigger a so-called megadrought as severe as the droughts that plagued the Southwest in the 1950s—only longer. "This just emphasizes how precious water is, and how we need to manage it on a decades horizon," said Ault, assistant professor at Cornell's Department of Earth and Atmospheric Sciences. "This is a natural disaster that's slowly unfolding."

And yes, not everyone believes in climate change. Sen. Ted Cruz, R-Texas, who is now a presidential candidate, has compared climate change activists to "[flat-Earthers](#)." On the flip side, California isn't going to dry up quickly and crumble like a cracker into the ocean.

Farmer DeWit's immediate reality is less water. "A new reservoir will not solve our current situation. We would need rain to fill it," he said.

But DeWit and others in the agricultural business remain a hopeful breed. You have to be, to survive farming's feast and famine patterns. "We will get rain again. And we will have another drought," he said. "I'm thinking of my children's future on the farm."

First published March 30th 2015, 7:11 am

Legislators not wasting a serious drought

Emergency relief bills use the water crisis to enhance state power

By [Steven Greenhut](#) 1:40 p.m. March 27, 2015

SACRAMENTO — “You never want a serious crisis to go to waste,” [said former White House chief of staff and current Chicago Mayor Rahm Emanuel](#), who [in 2008 argued](#) that a crisis lets officials “do things that you could not do before.” The state’s legislators last week showed they’ve mastered what some people refer to as [Rahm’s Rule](#).

As the rainy season ends after little rainfall, [Californians are well aware of the seriousness of the state’s three-year-old drought](#). Snowpack is down. Reservoirs are parched. [So legislators this week](#) voted in favor of a quickly assembled drought-relief package.

The centerpiece ([AB 91](#)) mainly speeds up the spending of more than \$1.1 billion in already approved dollars for various programs. But critics says that it does more to expand the power of regulatory officials than to lessen the impact of the drought.

For instance, \$24 million is earmarked to the Department of Social Services to help communities weather the drought; \$19 million funds the [“Save Our Water”](#) public-education campaign; and \$13.9 million goes to the Department of Fish and Wildlife to help protect endangered fish. Around \$20 million goes for emergency drinking water systems for several poor communities where wells have gone dry or become contaminated. Most of the money goes to flood control and there's funding for water recycling and desalination.

The bill includes the approval of a bargaining agreement that boosts the pay for [some professional workers employed by the department of corrections](#). But the real exploitation of the crisis comes in the trailer bill, [AB 92](#).

This bill allows the [Department of Fish and Wildlife](#) “to assess civil penalties, including administrative penalties, for obstructing fish passage” and it allows the department to initiate a complaint against property owners for “an unauthorized diversion or use of water that harms fish and wildlife resources,” according to the Senate analysis.

[Republicans, who mostly supported AB 91 despite some grumbling, came out strongly against AB 92](#) because of this expansion of regulatory power – and because of a provision that creates a new Office of Sustainable Water Solutions. The latter may be a questionable use of tax dollars, but the former has sparked broader concerns.

“Once again the Legislature continually uses a crisis to expand the authority of government,” said [Sen. Tom Berryhill, R-Twain Harte](#), in a statement. “This time we are giving the Department of Fish and Wildlife unchecked authority to be judge, jury and executioner on water diversions.”

[The California Farm Bureau](#) is concerned, also. California farmers and ranchers have lawfully built tens of thousands of reservoirs, culverts and other private infrastructure which can now be said to obstruct the passage of fish, explained the bureau’s Noelle Cremers. These owners can face daily fines of \$8,000 — or a costly fight with regulators.

The current head of the department said he will only use the power for egregious water diversions, Cremers added, but these new powers are permanent. Eventually, the state will have different directors who will implement the law in a different way.

Furthermore, game wardens are not experts in the complex system of water rights. They might see a culvert and believe it to be an improper diversion, even if it's perfectly legal. That's why the power to cite owners currently rests with [the state water board](#).

The bill's supporters argued it's necessary as a way to [crack down on illegal marijuana farmers who have caused streams to run dry in the north coast](#). Opponents say there already are plenty of legal options for law enforcement officials who are combating illegal pot growing operations. It seems bizarre to use a minor problem to justify a broad-ranging legal change.

[Environmental consultant Tom Tanton](#) blames the drought on government policies that divert 50 percent of the state's water supply to environmental demands and complains that officials are now using the weather to permanently grab more power. "If there were ever a time for sunset provisions, now is that time," he added.

But that's unlikely to happen. Legislators don't want to miss the vast opportunities this drought crisis offers them.

Greenhut is the California columnist for U-T San Diego. Contact him at steven.greenhut@utsandiego.com.

CAPITAL PRESS

Report calls for better data to plan for droughts

[Tim Hearden](#)

Capital Press

Published: March 30, 2015 12:18PM

SACRAMENTO — The author of a new state report that examines the history of droughts in California suggests that water managers should gather better data about groundwater conditions and improve their ability to predict and prepare for droughts.

Jeanine Jones, the state Department of Water Resources' interstate resources manager and deputy drought manager, points out that droughts are nothing new in California but could become more frequent and intense because of climate change.

Jones asserts that past dry spells such as one that lingered from 1929 to 1934 were even more severe hydrologically than the current one, but they occurred when irrigated farm acreage in the state was relatively small and the population was just a few million people.

Now the impacts of drought are much more devastating, causing numerous problems for small, rural water systems while increasing the risk of catastrophic wildfires that can cause loss of life and property, Jones said in an interview.

For farmers, worsening droughts make their water supplies increasingly vulnerable and could perhaps prompt some to change what they plant, she said.

"I think the farmers of necessity are already pretty good risk managers," Jones said. "They have to be. But I think this points out some things to think about going forward. We expect increasing temperatures as an outcome of climate change, so in essence we're expecting that for people with vulnerable water supplies ... that kind of risk will increase over time."

Over time, row crops may offer less of a downside for growers than permanent plantings, which are a major capital investment and can provide a big reward but tend to be more dependent on water supplies, she said.

Jones' report, "California's Most Significant Droughts: Comparing Historical and Recent Conditions," details the impact of past droughts while examining changes in water systems, surface and groundwater resources and historical precipitation. The report aims to point out lessons learned from past droughts, state officials said.

Jones found that three important "gaps" have stood out over time: the inability to characterize statewide groundwater conditions, to predict if the next season will be wet or dry, and to improve drought preparedness for small water systems.

On the subject of weather predictions, models typically look two weeks ahead but are most skillful for timeframes of less than five days, the report stated. Better long-range forecasting would help agencies plan reservoir operations and potential water project allocations, Jones wrote.

The DWR has been working with climate researchers on technology to better predict the forming of "atmospheric river" storms that reach the West Coast, as the absence of those storms typically leads to drier conditions, the report explains.

"California is very dependent on a small number of storms for its water supplies," Jones told the Capital Press. "This year, most of the water supply we got was from two big atmospheric river events in early December and early February ... On average, our entire water-year budget comes from 10 storms or less, and often less."

Jones expressed optimism that recently enacted state groundwater controls will help agencies get a better handle on conditions of groundwater basins, and she said the \$7.5 billion water bond approved by voters last fall will provide some funding to improve water systems.

Online

California's Most Significant Droughts: Comparing Historical and Recent Conditions:

<http://www.water.ca.gov/waterconditions/publications.cfm>

LOS ANGELES TIMES

Gov. Jerry Brown OKs \$1 billion to tackle drought, other water issues

By [Chris Megerian](#) [contact the reporter](#)

Gov. Jerry Brown on Friday signed legislation with more than \$1 billion in spending on water projects.

The two bills include emergency relief, such as food and water supplies, for drought-stricken communities in the Central Valley. There's also hundreds of millions of dollars for long-term projects involving flood control, desalination and water recycling.

"This funding is just one piece of a much larger effort to help those most impacted by the drought and prepare the state for an uncertain future," Brown said in a statement. "But make no mistake, from Modoc to Imperial County, rain is not in the forecast and every Californian must be doing their utmost to conserve water."

The legislation includes only \$27.4 million in new funds. The rest of the money was included in previous budget proposals or bond measures that have already been approved by voters. In addition, some of the projects being supported by the legislation won't be completed for years.

Some advocates have urged state leaders to take stronger steps toward water conservation, including mandatory rationing, because Californians have fallen short of Brown's goal of reducing water use by 20%.

Felicia Marcus, chair of the State Water Resources Control Board, said statewide rationing would be difficult to implement and fairly enforce.

"Water is managed locally in California. There are thousands of water agencies," she said. "It's not like there's one bucket of water that everybody shares."

However, she said not enough has been done to conserve water, and the board may consider some stricter measures this spring.

"At this point, we are frustrated," Marcus said.

Follow [@chrismegerian](#) for more updates from Sacramento.

THE FRESNO BUSINESS JOURNAL

Rep. Nunes chief of staff leaves for Westlands job

Published on 03/27/2015 - 10:30 am

Written by Business Journal staff

Rep. Devin Nunes (R-Tulare) announced that long-time Chief of Staff Johnny Amaral is leaving for a position with Westlands Water District.

Amaral ran Nunes' first successful Congressional campaign in 2001, and has served as chief of staff since 2002.

"This has been, by far, the most rewarding job I've ever had," said Amaral. "I've had the privilege of meeting a huge number of our constituents and working with the most incredible people in the Central Valley. It was a tough decision to leave this office and our amazing staff, and to part ways with Devin, who is one of my best friends. But I'm looking forward to a new opportunity with Westlands to continue pursuing one of my main goals of the past thirteen years — to end the man-made drought in the Central Valley."

Amaral's title with Westlands will be deputy general manager for external relations, drawing upon his more than a decade of experience on water issues and long-standing relationships with farmers, policymakers and principals stakeholders at the local, state and federal levels, according to a news release from Nunes' office.

"Johnny has been crucial to my efforts, both in our home district and in Washington," Nunes said. "He has deep knowledge of all the key issues facing Central Valley communities, and has handled even the most difficult problems with absolute professionalism and a dose of good humor. I commend my good friend for his many years of service to the people of the 22nd District. While I'm sad to lose Johnny, I think his hiring by Westlands is a positive sign that the water district intends to take a more engaged, pro-active approach to solving the water crisis."

Amaral begins at Westlands on May 1. Amaral will be paid \$250,000 a year — a 50 percent raise from his House of Representatives salary, reported The Fresno Bee.

Anthony Ratekin, a Valley native and previous field representative for Nunes, will serve as his new chief of staff, based in the Clovis and Visalia offices.

WATCHDOG.ORG

California's government-induced "drought" will send national food prices skyrocketing

By [Stephen Frank](#) / March 30, 2015 / [1 Comment](#)

George Skelton of the Los Angeles Times recently repeated an idea making the rounds in Sacramento—that the state should restrict the crops being planted in California. For instance, almonds growing on trees take much more water than row crops, such as tomatoes; proposals would restrict water-intensive crops. Imagine a farmer waiting for a government agency to tell them what crops and how much can be planted.

This is just one example of the problems facing California farmers and American consumers.

Yes, California is living through one of the worst droughts in our history. The Sierra snowpack, where a large amount of our water comes from, is down 10% from normal. The Federal Water Project is guaranteeing no amount of water for farmers. The state water project is willing to allocate between 5-25 percent of needed water for farmers, based on location. California has a drought, but the lack of water is due to government policy.

1. For forty years the policy of Gov. Jerry Brown started in 1975, when he was first elected governor, has continued. The policy was to stop the construction of infrastructure projects like roads and dams.
2. Environmentalists have stopped the building of desalinization plants. In Santa Barbara they built a plant in the early 1990's but were never allowed to open it. Now that water is being trucked into Montecito and other areas of the County, they are allowing the plant to open. Along the San Diego and Orange County coasts several are within a year from opening. However, they will take care of the growth in population instead of meeting current needs.
3. Both the Los Angeles and San Francisco areas have allowed millions of acres of feet of water to flow into the ocean. In the North this is because of the effort to "save" the delta smelt and other fish. In LA, it is because of government being lazy in saving water. These problems have been known since the 1970's and nothing has been done to save the water.

Now the nation is going to be harmed by government policies, both state and federal. The availability of California grown food will be lessened. "Exports of California food products took a dive in August (2014), with fruit and tree nuts decreasing by 8 percent when compared to the same time last year and vegetables dropping by 7.8 percent," [according to data](#) released Friday by .

The cause is fairly obvious, said Beacon trade expert . An unprecedented drought has led to fallow fields and less food available for export. Ultimately, California can expect a rise in agricultural imports, O'Connell predicted, as grocers are unable to maintain volumes of locally-sourced produce.

The lack of water this year is going to be worse than last year. Plus, the state is monitoring the use of groundwater more closely, and in several cases the over drafting of groundwater has been stopped.

What does this mean for the national consumer?

The [California Department of Food and Agriculture reports](#) that “California’s agricultural abundance includes more than 400 commodities. The state produces nearly half of US-grown fruits, nuts and vegetables. Across the nation, US consumers regularly purchase several crops produced solely in California.”

So when California produces fewer crops, the economics of food changes in at least two ways.

First, the cost of California produced food, more than half the nation’s supply, will increase. Simple economics, the less of a product that is wanted, the higher the price.

The second effect will be the increased importation of food from Mexico and Central and South America. Already peaches and other fruits from Chile are flooding the California fruit markets. This helps the Chile economy, but once sold in the United States, at a lower price than American grown fruit, it will keep and grow market share. Like American manufacturing has been sent overseas, it looks like food production is joining them.

The [United States Trade Representative Office reports](#) this about Chile, “U.S. imports of agricultural products from Chile totaled \$2.9 billion in 2013, the 8th largest supplier of Ag imports. Leading categories include: fresh fruit (\$1.6 billion), planting seeds (\$413 million), wine and beer (\$321 million), and processed fruit and vegetables (\$254 million).”

California water policy, no dams, no stopping water flowing into ocean, lack of desalinization plants and others policies based on environmentalism and ideology have created a water shortage. It cannot be reversed until the policies are repealed. Until then, the jobs of Californians are being lost and the cost of food for a whole nation will go up. Government water policy is lose-lose.

When will the public realize the lack of water is due to government, not nature?

This article was written by a contributor of Watchdog Arena, Franklin Center’s network of writers, bloggers, and citizen journalists.

THE PORTERVILLE RECORDER

Farmers hope to survive another year

Posted: Saturday, March 28, 2015 6:00 am

By RICK ELKINS relkins@portervillerecorder.com

Editors Note: This is the first of a four-part series looking at the severe impact the drought will have on agriculture this summer. Part I is an overview. Part II will look at the impacts on citrus. Part III will look at what dairymen are facing. Part IV will look at fruit and nut crops.

ON THE BRINK

There is no way to sugarcoat the train wreck known as a fourth year of drought heading our way. Everyone connected to farming admits the Central Valley is on the brink of disaster.

Past decisions to not deliver water to farmers in the Valley and the unprecedented drought have created conditions not seen before.

“This year the hydrology is bad, worse than 1977 and worse than 1924,” said Sean Geivet, manager of the Porterville, Saucelito and Terra Bella irrigation districts.

“What we saw last year was just the tip of the iceberg. Those who just got by last year will be out of water by June,” he predicted.

“California’s agriculture is at serious risk. While it is normal for the state to go through periods of drought, little has been done to resolve the lack of water storage with a bottom line end result being the need to permanently damage the environment by using more groundwater. Once the land sinks, you never regain all the water capacity lost from the underground aquifers,” reported Scott Borgioli, meteorologist and owner of WeatherAg.

Growers are reporting more and more often that they are not finding water after drilling. Some are simply walking away and will let an orchard die.

At stake is billions of dollars in the local economy. Last year, ag commodities in Tulare County were valued at \$7.1 billion. By far, farming is the engine that drives the Valley’s economy and one of the top industries in the state. Tens of thousands of jobs directly rely on agriculture, with twice that many indirectly dependent on farming.

California is the leading food-producing state in the nation with ag commodities statewide valued at more than \$45 billion. Nearly 2.5 million jobs in the Golden State are tied to agriculture.

The Cause

Rainfall in Porterville since July 1, 2014 amounts to just 4.69 inches — only 1.05 inches of that since Jan. 1. More importantly, there is zero snowpack and there has not been a snowpack since December. As of Friday morning, Success Lake held 8,120 acre-feet of water, 5,000 acre-feet less than it peaked at last year.

And, it is not just our area.

“This is the driest watershed on record,” said Geivet. The state’s latest figure is the snowpack is the smallest ever at just 9 percent of normal.

There is no rain or snow in the forecast.

And, it is not just this year. Over the past four years, to date, rainfall has averaged less than 6 inches. So far this March, only a fifth of an inch of rain has been measured, making this the tenth driest March since 1895.

The feds have already announced there will be no surface water for farmers, the second consecutive year that will happen and only the second time in more than 60 years that has happened.

Underground Search

Because there will be no surface water, more and more farmers must rely on the underground water supply and that is being depleted quickly.

“Guys are drilling wells trying to find water. They’re kind of finding it harder and harder,” said Geivet. He reported the water table just west of Porterville has dropped 30 feet in two years.

One grower said some are letting groves go because they cannot find water after drilling a well. At anywhere from \$40,000 to \$500,000 to drill a well, most cannot afford to drill a second well.

Even if you have water, finding a driller is still a timely process. Tulare County Farm Bureau President Tricia Stever-Blattler said the backlog is so bad — up to a year — some growers have invested in purchasing their own drilling rigs and are drilling themselves.

On The Brink

When asked if the area is on the brink of disaster, Tulare County Ag Commissioner Marilyn Kinoshita matter of factly stated, “We are almost in a cataclysmic disaster,” she said, wondering if cities like Porterville, Tulare and Visalia can survive.

“You can almost hear the disparity. When you don’t have water, you’re done,” she added.

Stever-Blattler agreed.

“There is tremendous uncertainty,” she said of farmers. She explained they are concerned if they can find any (surface) water and at what price. Geivet said unlike last year, there is not much water to be found and where there is water, state officials want to hang on to it for fish. The price for what water is available is about triple a year ago and going up. When a farmer used to pay about \$50 an acre foot, they are now being asked to come up with \$1,200 to \$2,000 for an acre foot of water, said Stever-Blattler.

To keep an orange orchard alive requires at the minimum a foot of water per acre. To produce a crop requires 3 feet of water per acre.

Kinoshita, who a year ago was able to boast that Tulare County was the No. 1 farm county in the world, is worried that as water becomes more scarce growers will leave the area and even the state and take the jobs with them.

Also, she said the drought is pitting growers against everybody else. She said it is especially true that the small grower is being pitted against the large grower. She said there is growing anger that those who can afford it are drilling big, deep wells, while the small growers go dry. She did say that is not a widespread problem, but is beginning to surface.

Barry Bedwell, president of the California Fresh Fruit Association, said it is inaccurate to say farming uses 80 percent of California’s water supply. That use to be the case, but Bedwell said today 50 percent of that precious supply is going for environmental purposes with ag using about 90 percent of the remaining 50 percent.

Joel Nelsen, California Citrus Mutual president, said no doubt this will a challenging year for citrus growers and the make or break it point for most growers is right now as next year’s crop is setting. He said 50,000 acres of citrus are “extremely vulnerable” to the lack of water.

He criticized politicians for putting fish ahead of people and food.

“We’re the only state in the nation that sets policy to destroy the production of food,” he said.

Still Hope

Always the optimist, farmers are not yet walking away completely, but some have abandoned groves or fields. Others are tearing out old orchards and replanting.

Bill Bennett, an area citrus grower, knows his 10 acres of oranges in Terra Bella are not going to survive.

“I put a fork in it, letting it die,” he said.

Terra Bella, or anywhere where underground water is not available, is in big trouble. Stever-Blattler said estimates are that 25 percent of the citrus group in the southeastern area of the county will be lost this year.

Last year, roughly 6,000 acres of citrus in Terra Bella were in danger, but somehow survived. Geivet said they likely won't survive this year.

"I think we are approaching some real scary times," said Stever-Blattler.

Paul Martin, head of Western United Dairymen, said he still has faith.

"Our guys are pretty darn adaptable. They will learn how to operate with less water."

THE PORTERVILLE RECORDER

Citrus growers facing a tough year

Posted: Monday, March 30, 2015 6:00 am

By RICK ELKINS relkins@portervillerecorder.com

Editors Note: This is the second of a four-part series looking at the severe impact the drought will have on agriculture this summer.

On The Brink

When it comes to the drought, local citrus growers are facing some of the biggest challenges.

The county's \$1 billion citrus crop is reeling from both four dry years and decisions to withhold irrigation water they have relied on for more than six decades.

Growers this year are not going to see any surface water and many face a year without ground water as well.

"I know we're going to be impacted — we've been impacted," said California Citrus Mutual President Joel Nelsen. He said within the Friant Water division, which includes all of the Tulare County orange belt. He added there are 50,000 acres that are extremely vulnerable because they do not have groundwater.

One of those growers is Phillip Giannetto.

"It's a real thing. Right now I'm in disbelief," he said. Giannetto has 250 acres of oranges in the Terra Bella area with no water. There are approximately 600 growers and some 6,000 acres of citrus in Terra Bella that do not have access to ground water because of the topography. Without surface water, their orchards will die.

Last year, Terra Bella Irrigation District manager Sean Geivet was able to find just enough water to keep most trees alive. He is not very confident he can find that water in this fourth year of historic drought.

"I don't see any water until at least April. Bureau (Bureau of Reclamation) has allocated 25 percent of what I got last year for domestic users in Terra Bella," he said. He added, "I don't know how Terra Bella is going to survive."

One bit of good news, Lee Cohen with Setton Pistachio said they just got the go ahead to put on line a well the Pistachio company drilled last year to help out the community. That water will be pumped into the community's water treatment plant.

No Water To Be Found

Farmers, however, are still looking for any drop they can get.

Giannetto said he needs a foot of water per acre just to keep his trees alive and 3 feet of water per acre to produce a crop. He said he got a very limited crop on a few of his orchards last year. He said he does have a little carryover water from last year, but only enough to keep about 30 acres alive.

Nelsen said growers are having to decide which orchard to save and which one to let go. Citrus grower Billy Bennett has decided to let his 10 acres of oranges in Terra Bella die.

What water that might be found, will be costly. Giannetto said last year he dug deeply into his savings to pay \$1,200 an acre foot. "I'm being asked to come up with \$1,330 an acre foot," he said of this year, "but there's no water available."

Terra Bella is not the only area of the county struggling. A grower said ground water that was always there is the past, is gone in some areas, like Ivanhoe. Growers who are spending \$80,000 to drill well and find no water, do not have the money to drill another and banks are not likely to hand out loans on land with no water.

Nelsen said there are 120,000 acres of citrus in the region that will not have surface water again this year. He said the drought has already shown up with smaller fruit size and he is concerned fruit will be hard pressed to get much size next year.

"You need water now, then through the summer you've got to have sufficient water for the fruit sizes," he said. "Then, you hope for some early fall rain."

He stressed, "It's going to be an extremely difficult year."

Nelsen has been very critical of decisions to send water out to the ocean instead to grow food.

"You still have a mindset that producing food is not a priority," he said, adding that Friant water users had a \$6 per acre foot surcharge on what they pay for water for "environmental enhancements. We've never been told how that's being spent," he added.

Tulare County Farm Bureau Executive Director Trica Stever-Blattler said growers with younger trees will get by because they need less water. She has heard citrus could lose 25 percent of its acreage, most of that in the southeastern portion of the county. Nelen said it takes five to seven years before a new orchard begins producing. Tulare County has more than 114,000 acres planted in citrus.

"Growers are worried whether this is the last year they will have a crop," said Stever-Blattler.

Giannetto, who works besides growing citrus, said he is more worried for those growers who only grow citrus.

"There's other guys out there that citrus is their complete livelihood."

Also, he said, he is fearful the loss will trickle down to Main Street.

Nelsen offered some hope when he said growers have become more water efficient and better at finding ways to survive.

"I was surprised last year. It seemed like everybody got through. Who knows what will happen this year," said Giannetto.

TID staff urges 18-inch cap on water

By John Holland

jholland@modbee.com

03/30/2015 5:01 AM

03/30/2015 5:01 AM

The staff of the Turlock Irrigation District recommends capping water at 18 inches this year – a tiny bit more than had been discussed, but still much less than the accustomed amount.

The district board will consider the 2015 allotment Tuesday morning, as well as a proposed April 9 start to the irrigation season. That is later than usual, part of the effort to conserve water in a four-year-long drought.

The Tuolumne River watershed has produced just 13 percent of average runoff to date, said Mike Kavarian, water distribution manager, in a memo to the board.

“Weather forecasts also indicate no significant rainfall on the horizon,” he said. “As a result, 2015 will be an extremely dry year.”

The staff had talked about a cap of 15 or 16 inches during meetings with farmers last month. The boost to 18 came after a review of up-to-date watershed conditions.

It will be a “soft cap,” meaning that farmers will be able to exceed 18 inches to complete their last irrigation of the season, scheduled to end Oct. 7.

TID typically makes 48 inches available in years with adequate rain and snow. Last year, it had a soft cap of 20 inches.

The district plans on above-average pumping from its own wells and those rented from farmers. It also aims to keep spills in the canals to a minimum and will allow customers to transfer water among themselves.

The proposal to start irrigation season late drew some discussion at last week’s board meeting. Director Joe Alamo said he heard from a couple of tree crop growers who need water sooner.

“They’re saying their crops are really being damaged if they don’t get that water,” he said.

TID is the largest irrigation district in the Northern San Joaquin Valley. It serves about 149,000 acres in an area from south Modesto to north Merced County and from the lower Sierra Nevada foothills to the San Joaquin River.

The Modesto Irrigation District, which also draws from the Tuolumne, expects to deliver 16 inches this year.

Also Tuesday, the TID board will hold a workshop on its new rate schedule for customers who generate solar electricity. Installers have raised concerns that the rates do not adequately compensate customers for excess power they send onto the grid.

Bee staff writer John Holland can be reached at jholland@modbee.com or (209) 578-2385.

AT A GLANCE

What: Turlock Irrigation District board meeting

When: 9 a.m. Tuesday

Where: District office, 333 E. Canal Drive, Turlock

Agenda: www.tid.org

THE MODESTO BEE

So, why are those Stanislaus County canals filled with water?

By Garth Stapley

gstapley@modbee.com

03/27/2015 6:14 PM

03/28/2015 6:28 AM

Why are some canals full of water if Modesto Irrigation District's season doesn't start for another week?

And why is the Stanislaus River brimming with water? Don't the people who run those dams up in the hills know we're facing one of the worst droughts in history?

Calm down, people. These questions have answers.

Let's look first at MID canals. Water has been flowing into some canals for weeks, off and on. But it's not melted snowpack from the Tuolumne River, which won't start filling canals until Easter Sunday.

What you're seeing is groundwater pumped from wells. A farmer whose crop can't wait until after Easter can use an MID canal at no charge to carry groundwater from his private well to the point where he takes it out to put on that thirsty crop. Or he can rent a district pump and do the same.

Because of minerals in groundwater, it's not as pure as surface water from the river, and the cost of electricity for pumping makes it far more expensive. But even in irrigation districts, groundwater often keeps trees and plants alive and plays a critical role during a drought. Outside of irrigation district boundaries, many nut orchards survive exclusively on groundwater.

During irrigation season, a constant flow of river-fed canals keeps them charged, or full enough to create the pressure that farmers need to take water when it's their turn. In the off-season, they use weirs to book-end canal segments, creating a bay from which to pull water with a pump. Because of dry weather, some 200 MID wells rented by farmers have been going full-tilt.

Some country folks with domestic wells have questioned whether these huge, industrial-size wells suck from the aquifers they depend on, perhaps resulting in shallower wells going dry. Most complaints have not been within MID's territory.

By the time people around Modesto read this, the canal they're used to seeing is dry, or soon will be. That's because MID crews need a few days between the end of groundwater pumping and the start of irrigation season to remove weirs, temporary blocks in the canal made of concrete or lumber.

Most farmers rely on a combination of water sources: private pumps, district pumps, surface water, transfer programs and what little rain fell in the winter. There is nothing unusual about canals transporting groundwater before or after the formal irrigation season, but heightened awareness of water issues in this fourth consecutive drought year prompts calls and emails from the curious, MID spokeswoman Melissa Williams said.

“And same as canals, people notice when the river’s up,” she added, leading to the second question.

‘Pulse flows’ aid fish

For this answer, we’ll turn to the Oakdale and South San Joaquin irrigation districts because they depend on the now-swollen Stanislaus. Actually, a three-day surge in dam releases was scheduled to end Thursday, so the river level might be about back to normal by the time people read this.

But many noticed, and some were angry – including those who could be affected if the partner districts were to drain Lake Tulloch this summer as a drought-coping strategy. Similar surges will follow mid-April to mid-May, and again in October, and it’s all part of a high-level effort to benefit migrating fish.

For several decades, foothill dams holding snowmelt have released it little by little throughout the year. The gradual flow enabled the Valley to blossom in agricultural glory, but environmental advocates blame the unnatural flow for nearly exterminating steelhead trout and salmon; they need bigger rivers in the spring to push them to the Delta and out to sea, and to return to spawn in the fall.

The Endangered Species Act of 1973 started changing things, resulting in so-called pulse flows of recent years, timed to best help fish. The flows can swell the Stanislaus from 150 cubic feet per second to 1,000.

“It’s a cookbook approach to fisheries management,” OID General Manager Steve Knell said of release tables proscribed by the federal government.

Unaltered, the mandatory fish flows might have reduced the Stanislaus to a trickle by fall. Negotiations involving OID, SSJID and federal officials a few days ago produced a tentative deal for relaxed fish-flow requirements while reserving enough for fall spawning, and at the same time keeping Tulloch full enough for tap water and recreation demands through September.

U.S. Reps. Jeff Denham and Tom McClintock and state legislators Kristin Olsen, Tom Berryhill and Adam Gray praised the deal, but it could fall apart if state water leaders don’t give it a green light in mid-April. That could provoke a lawsuit involving the districts, its officials said.

The congress members on Thursday sent a letter to the California State Water Resources Control Board saying they’re “adamantly opposed” to pulse flows “for the theoretical benefit of fish populations,” especially in time of drought, and calling the deal “a delicate balance between competing needs.”

Jack Cox of the Lake Tulloch Alliance said fish-flow policy “waste(s) enough water to supply the cities of Modesto and Stockton combined for one year.” The group will stage a Water Crisis Forum at 10 a.m. Saturday at 920 Black Creek Drive in Copperopolis. For more information, go to www.laketulloch.org/.

The Tuolumne – the source for MID and its larger partner, the Turlock Irrigation District – also is subject to federally ordered pulse flows. The next will begin Wednesday and last through April 11, peaking Friday at 1,222 cfs.

Bee staff writer Garth Stapley can be reached at gstapley@modbee.com or (209) 578-2390.

How baseball trades are like water transfers

by Eric Miller, CVBT North Valley Correspondent

CHICO

March 29, 2015 9:01pm

- **California's economy evaporates without water.**
- **"No matter how well we planned, Mother Nature had the final word"**

California's snowpack has batted 0 and 4 the past four winters. Boston plowed more snow than Truckee. The rains haven't come and reservoir levels are woefully low with little relief in the bullpen. March mewed like a kitten.

In 2014, drought season three, California's five Major League Baseball teams had rainout games. But most of those games were in Seattle, Denver and Cleveland. Two rainouts occurred in the Golden State last year, both in Oakland. Suppose an artesian well gushed from Oakland County Coliseum's left field. Could the A's send surplus water across the Bay to irrigate turf at AT&T Park?

Far fetched? The artisan well, perhaps, but not the transfer of water. That's already well underway in a broader scope.

"The Hayward Intertie connects the East Bay Municipal Utilities District (EBMUD) to the San Francisco Public Utilities Commission (SFPUC) system," says Nelsy Rodriguez, a spokeswoman for EBMUD. "The intertie agreement between EBMUD and SFPUC is for emergencies such as earthquakes."

Tyrone Jue, a spokesman for the SFPUC, clarifies: "Pipelines run beneath the Bay Bridge. We just completed a transbay tube beneath a portion of the San Francisco Bay to bring water to the Peninsula."

Oakland's water supplier, EBMUD, imports water from Amador County across the San Joaquin Valley south of the Delta through the Mokelumne River Aqueducts. The SFPUC imports water to San Francisco from the Hetch Hetchy Regional Water System on the Tuolumne River nearly 170 miles from the faucets of San Francisco.

EBMUD, which buys water from the federal Central Valley Project, works within Delta constraints as do other Bay Area water users such as the Santa Clara Valley Water District in San Jose. "We provide water for a minor league baseball team," chuckled Marty Grimes, program administrator with the district, "and hockey. We provide wholesale water throughout the South Bay including SAP Center where the San Jose Sharks play." Northern California ice fields are rare this year. At least the Shark Tank, a 12,000-gallon indoor pond, freezes over.

The Santa Clara Valley Water District manages groundwater basins and reservoirs serving a population of 1.9 million. District-owned Lexington Reservoir (located between San Jose and Santa Cruz) is at 45 percent capacity. "Lexington's water recharges local groundwater basins and creeks," Mr. Grimes says. "In good rain years, Lexington can reach capacity from accumulated rainfall runoff. We also import water from the Central Valley Project and State Water Project. The District's water supply originates from groundwater, local reservoirs, and the Delta. Recycled water is part of our supply and makes up 5 percent of our county water use."

"The Delta is the weakest link in our state's infrastructure," said Mark Cowin, director of the California Department of Water Resources (DWR), in speaking recently to an audience of farmers, water managers, and stakeholders at the Northern California Water Association's annual meeting in Chico. "DWR regularly communicates with water managers

and state wildlife authorities on fishery concerns,” he said. “We monitor flows leaving the Delta but the need for real-time data is forefront. We must use this information in more than just a philosophical way.”

Eyes glaze at terms like Delta, Central Valley Project, and State Water Project, jargon fuzzier than sports statistics. Many Californians only care that water flows from their faucets.

The Delta, located in the vicinity of Sacramento, Yolo, San Joaquin, Contra Costa, and Solano counties, is the switchyard for transporting water across California. The Sacramento River flows from the north and the San Joaquin River flows from the south. The rivers meet at the Delta southwest of Sacramento. Major rivers that join the Sacramento include the Feather, Yuba, and American. Rivers joining the San Joaquin include the Mokelumne, Stanislaus, Merced and Tuolumne. A 70-mile drive over a 30-foot elevation drop separates Sacramento from San Francisco Bay. That gradient allows the tidal mixing of fresh water and ocean water within the Delta. The Delta is a gigantic estuary home to sensitive fish species ranging in length from pinky-sized Delta Smelt to six-foot sturgeon. With more than 60 islands and a population exceeding 500,000, the Delta is nearly the size of Rhode Island.

But unlike Rhode Island, which once supported an Atlantic salmon fishing industry, the California Delta supports Pacific Salmon, catfish, and bass. The Delta and Suisun Marsh are also home to pelicans, cranes and birds of prey. Rich in farmland, the Delta produces corn, grain, alfalfa, tomatoes and other crops.

Fresh water that doesn't exit through the Golden Gate is redirected via pumps, pipes, and canals to points south and west. Two large projects that carry source water from Northern California include the Central Valley Project and State Water Project.

The Central Valley Project (CVP), a Federal project approved by Congress in 1933, originates in the Sacramento River watershed upstream of Redding. Much of its water is stored in Lake Shasta and managed by the U.S. Bureau of Reclamation. The State Water Project (SWP), which originates in the Feather River watershed, was approved 27 years later by the California Legislature. SWP water is stored at Lake Oroville and managed by DWR. Both projects move water to agencies throughout California that hold contracts to buy it. If any water is left after project demands are met, water can be transferred to areas in need.

CVP and SWP contractors generally follow the same water transfer rules except that CVP contractors are subject to the National Environmental Policy Act (NEPA). SWP contractors follow the California Environmental Quality Act (CEQA). In cases where CVP and SWP contractors transfer surplus water to areas in need, both CEQA and NEPA come into play. Clear as mud?

The two projects are analogous to baseball's American and National Leagues. The National League was formed in 1876, 25 years before the American League. Both leagues play the same game but have different rules. The AL uses the designated hitter to replace pitchers during at-bats and the NL does not. CVP and SWP water contractors use the same principles as trading ball players. EBMUD's Ms. Rodriguez adds, “Think of the State Water Resources Control Board as the Commissioner of Baseball that approves trades and transfers.”

Consider the city of Anaheim, which uses a blend of local groundwater and imported water from the Colorado River and the SWP. Angel Stadium in Anaheim indirectly receives SWP water. Pat Rice, a coach within the Angels organization, pitched for the Seattle Mariners before being traded and transferring to several clubs. His playing career ended in the minor leagues before he started coaching. “Being traded or transferred is part of baseball,” says Mr. Rice. “It's just business. What you may have seen or read in Money Ball is pretty much how it goes. Teams identify a position where there's a surplus, find a team that needs it, and make a deal. If we're short a player we look for one.”

Like baseball managers, California water managers figure out who has surplus water. Instead of leveraging players, draft picks and dollars, water managers leverage the timing of water deliveries, cost, and quantities in acre-feet (AF). An acre-foot of water, roughly 326,000 gallons, can supply a suburban household for a year (an acre-foot of water would cover a baseball field four inches).

Water transfers evoke strong emotions for many Northern Californians. A perception is that Southern California cities or Central Valley farmers are robbing the North. But water transfers have sustained civilizations for thousands of years, such as when the Greeks and Romans exported water to grow crops and support cities. In modern times, the National Flood Control Act [1944] authorized the U.S. Secretary of the Army to make contracts with states or municipalities to buy surplus water available from reservoirs under control of the War Department. The pressure was on during World War II. Water was sent to places to grow food and make weapons. In 1955 Edmund Brown Sr., as California's Attorney General, wrote about "County of Origin" preferences. Mr. Brown cited early 1920's studies demonstrating that "there is more than enough water in the Sacramento Valley for its own use." He also referred to a 1925 report stating that "surplus water diverted from the Sacramento River into the San Joaquin Valley must be coordinated in both valleys to protect against present or future loss to the owners of vested rights."

The State Water Resources Control Board regulates water rights and water transfers. Last year nearly 412,000 AF of transfer water was requested by buyers but 379,000 AF was authorized due to curtailments. Water transfers require an agreement between a willing seller and willing buyer, and available infrastructure capacity to convey water between the two parties. Sellers must be willing to reduce the consumptive use of the water. Sellers can either idle cropland or pump groundwater instead of using surface water to irrigate, or release additional water from reservoir storage if it's available.

"Water moves through California all the time," says Thad Bettner, general manager for the Glenn-Colusa Irrigation District in Willows. "Sacramento River water moves from North to the South as part of the CVP project. But to transfer water, districts must make surpluses available. This occurs by re-operating reservoirs to manage the timing of deliveries. Some districts use groundwater to irrigate crops, freeing up surface water. Then there's fallowing where no crops are planted."

Glenn-Colusa Irrigation District water rights predate the CVP. "In 2014 we delayed diversions from the Sacramento River to store more water in Lake Shasta which helped the salmon fishery," says Mr. Bettner.

Ted Trimble, general manager of the Western Canal Water District, reflects on a 2012 water transfer involving idled cropland. Located south of Chico in the valley portion of Butte County, Western's Feather River water rights predate the SWP. The district irrigates 58,000 acres. "We met with [rice] growers to see who wanted to idle land. We limited fallowed acreage to 20 percent. Some growers fallow land as an opportunity to level fields or repair irrigation systems. Unplanted fields create a hardship for local dryers, trucking companies, and other support businesses. In 2012 the price for water was about \$200 per AF. We will not transfer water if our own supply is cut," he says.

Today's market rate for transfer water has ranged from \$700 to over \$1,700 per AF. Consider the economics of filling shopping carts with cases of bottled water. The retail price of that water, shipped across the country, can range from \$3 to \$4 per gallon, or over \$975,000 per AF.

Reality check — it's time for a seventh inning stretch

Ten years ago the Yuba County Water Agency prepared for a groundwater substitution transfer where surface water is sold and local groundwater is used for irrigation. The agency stores Yuba River water behind New Bullard's Bar Dam east of Marysville. Agency representatives spent months meeting with growers, identifying potential fields, supply wells, groundwater monitoring wells, and negotiating prices.

“That transfer did not happen,” says Curt Aikens, general manager. “Wet conditions in late spring and early summer erased the ability to transfer water. No matter how well we planned, Mother Nature had the final word.”

Barbara Vlamis, executive director for the environmental advocacy group AquAlliance.net in Chico, offers another perspective. “The San Joaquin Valley is a distinct area within the Central Valley. Our concern is that water transfers export wealth from the North. We have drought conditions up here too.”

Compared to MLB teams that schedule regular season games, we can’t schedule precipitation. Like food, precipitation is seasonal. We don’t know how much we’ll get or when it will come. “The drought ends when reservoirs rise,” said Mr. Cowin. “California needs many fixes: storage, better Delta conveyance, conservation, recycling, storm water capture, better groundwater management.... We cannot lose the will to make the changes we need to make.”

As trades and transfers are to baseball, water transfers are to California’s water industry. That assumes there’s enough water available to transfer.

About the writer

Eric Miller is a writer and consultant in Chico. He serves on the Butte County Groundwater Technical Advisory Committee, the Chico Urban Water Conservation Group, and also writes for Hockey Player Magazine. Connect with him on either Facebook or Twitter by visiting his humor blog at www.etcguy.com.

IMPERIAL VALLEY NEWS

‘Refuge’ for the endangered Delta smelt

Written by Kat Kerlin

Category: [California News](#)

Published: 29 March 2015

Davis, California - Delta smelt are hard to find. Federally listed as threatened in 1993 and as endangered under the California Endangered Species Act in 2009, they are an iconic species for water issues in the state. But there’s one place where the fish can be found by the thousands - the Fish Conservation and Culture Laboratory at the University of California, Davis.

For the past seven years, the facility, in collaboration with the UC Davis Genomic Variation Lab, has been raising a refuge population of Delta smelt, preserving their genetic diversity and providing a supply of the fish for scientific research. This month, the U.S. Bureau of Reclamation awarded the UC Davis lab, or FCCL, nearly \$2.5 million per year for four years to continue and improve its work for the species, which is endemic to the San Francisco Bay-Delta.

“The refuge population provides a level of protection against species extinction,” said Tien-Chieh Hung, director of the FCCL at UC Davis. “Our laboratory is, so far, the only place in the country that regularly reproduces and raises the Delta smelt throughout their whole life cycle, creating a supply for further studies.”

In the funding announcement, the bureau noted that there is “an urgent need for a genetically managed refugial population of Delta smelt to serve as a critical safeguard against species extinction in the event that the natural population continues its decline.” The FCCL fills this need.

The bureau said maintaining a genetically diverse population of Delta smelt in captivity would provide a seed population for future rehabilitation, should their habitat ever recover.

Presently, Delta smelt habitat is caught in a battle between protecting natural resources and providing Californians' water supply. Earlier this month, Peter Moyle, a professor and fish biologist with the UC Davis Center for Watershed Sciences, told the Delta Stewardship Council to prepare for the extinction of the Delta smelt in the wild. He said the latest state trawl survey found only six smelt - two males and four females - where there normally would have been several hundred.

A safeguard against extinction

The lab starts its spawning season by producing about 200,000 Delta smelt eggs and cultures roughly 20,000 fish each year.

The goals of the project are to:

- Continue to develop the Delta smelt refuge population as a safeguard against species extinction;
- Create a genetically sound population of captive fish for research purposes; and
- Conduct experiments on smelt physiology, health, condition and behavior.

THE PRESS DEMOCRAT

California agriculture industry could lose \$1 billion in two years because of drought

BY GUY KOVNER

THE PRESS DEMOCRAT

March 28, 2015, 11:25PM

California agriculture is in line for \$1 billion in losses this year and next, on the heels of a drought-induced \$1.5 billion hit in 2014, UC Davis scientists said.

"We're in a world of hurt," said Daniel Sumner, an agricultural economist, forecasting a fallowing of up to 1 million acres of irrigated farmland this year, twice as much as last year.

And with a fourth dry year unfolding, Sumner said there is a nagging sense in farm country that California has "established a new normal" that includes severe cutbacks in deliveries from two major water systems.

Irrigating 9.6 million acres of farmland takes about 34 million acre-feet of water in a typical year, accounting for 80 percent of human water use in the state, with the rest going to cities, according to the Department of Water Resources.

An acre-foot is 325,851 gallons and is generally described as enough water to sustain a family of four for a year.

Forecasts of the agriculture loss in 2015 and 2016 may be low, Sumner said, since the estimates were made last year and did not assume the drought would be as bad or worse this year.

The UC Davis report, released in July, cited the following impacts in 2014:

A \$1 billion revenue loss in crop, dairy and other livestock operations, amounting to 2.2 percent of the \$45 billion ag industry's value, compounded by additional groundwater pumping costs of nearly \$500 million.

A statewide drought cost of \$2.2 billion, counting the so-called "ripple effect" of farm revenue losses through the economy, such as reduced purchases of goods and services.

Loss of 17,100 seasonal and part-time agricultural jobs, representing 3.8 percent of farm employment. Much of that income loss falls on "the most vulnerable people," said Sumner, a co-author of the report, referring to low-wage farm laborers.

Fallowing of 428,000 acres of irrigated cropland in the Central Valley, Central Coast and Southern California, although Sumner and a California Farm Bureau Federation official said last week it was more like 500,000 acres.

"There was a lot of pain in farm country in 2014," said Dave Kranz, a Farm Bureau Federation spokesman. The "epicenter" of the drought's financial hit was in the San Joaquin Valley, which lies between the Sacramento-San Joaquin River Delta and the Tehachapi Mountains.

Farmers still are hoping for relief from spring rains but not betting on it, he said, after a month of mostly sunny skies.

Livestock ranchers say their pastures are green but the grass is not tall and they once again will be buying hay to feed sheep and cattle, Kranz said. Ranchers likely will cull their herds down to a size they can afford to feed, he said.

California produces nearly half of the fruits, nuts and vegetables grown in the United States and nearly one-quarter of the nation's milk and cream.

The drought's impact on food prices has been "relatively minimal" for the average consumer, Sumner said.

As water becomes limited, farmers shift more of it to high-value crops like avocados, strawberries, raspberries, lettuce, celery and broccoli, he said. Fallowing so far has primarily curbed production of rice, cotton, alfalfa hay and corn silage to feed dairy cows.

Sumner said he was working on an estimate of how much grocery bills will rise this year.

You can reach Staff Writer Guy Kovner at 521-5457 or guy.kovner@pressdemocrat.com. On Twitter @guykovner.

DAILY PRESS

Survey: Drought as critical as jobs to Californians

IE faring better, outlook more positive than most metros

By SHEA JOHNSON
STAFF WRITER

Posted Mar. 28, 2015 at 4:42 PM

Updated Mar 28, 2015 at 4:50 PM

Californians are equally likely to name the drought and the economy as the most important current issue facing the state, while more than half of residents surveyed in the Inland Empire called the supply of water "a big problem," a survey of 1,706 adults in California has found.

“The ongoing drought is raising concerns about the long-term water supply,” said Mark Baldassare, president and CEO of the Public Policy Institute of California, which administered the survey released last week. “Most Californians (66 percent) think their neighbors could be doing more to save water today.”

The majority of San Bernardino County falls into the “severe” drought category, with conditions worsening here from east to west, according to the U.S. Drought Monitor.

Most of the county fares better than about two-thirds of the state, however, as 66.6 percent of California is listed as being under “extreme” or “exceptional” drought conditions. Subsequently, the Inland Empire’s reaction to water is more positive than in most other metropolitan areas, according to the survey.

Residents of the Central Valley, where the drought has hit hardest, are most likely to see the water supply as a glaring issue, the survey found. Of those surveyed there, 76 percent called the water supply a major problem, compared to 71 percent in Orange/San Diego, 63 percent in the San Francisco Bay Area and 60 percent in Los Angeles.

The drought, along with rising water costs, was the impetus for the Hesperia City Council’s purchase in mid-March of 500 acre-feet of water rights for \$2.5 million.

“He who controls the water, controls his destiny,” Mayor Pro Tem Bill Holland said at the time, borrowing a phrase used by fellow Councilman Russ Blewett.

Slightly less of California is dealing with “extreme” or “exceptional” drought conditions than a year ago, according to the U.S. Drought Monitor, but almost twice as much of the state (41.41 percent) was listed under “exceptional” drought conditions than on March 25, 2014.

Gov. Jerry Brown earlier this month, in an effort to mitigate the ongoing drought, joined legislative leaders to announce a \$1 billion emergency drought package.

Shea Johnson may be reached at 760-955-5368 or SJohnson@VVDailyPress.com. Follow him on Twitter at [@DP_Shea](https://twitter.com/DP_Shea).

THE SACRAMENTO BEE

Drought threatens American River fish

By Matt Weiser

mweiser@sacbee.com

03/28/2015 5:19 PM

03/28/2015 10:08 PM

Endangered steelhead about to hatch in the American River could soon be killed by low flows and warm temperatures caused by the drought, a sign of the ongoing struggle over scarce water supplies.

The fish, which are protected by the Endangered Species Act, are beginning to hatch from eggs in riverbed gravel. They require water cooler than 57 degrees to survive. Temperatures are already warmer than that due to record-breaking heat this month and low river flows caused by a fourth year of drought in California.

As hatchlings – also known as alevins – the fish have not yet matured into fully formed fish and are unable to swim.

“It’s the most sensitive life stage. They can’t go elsewhere and they’re highly sensitive to flows,” said Tom Gohring, executive director of the Sacramento Water Forum, a coalition of Sacramento water agencies and environmental groups that monitors the river. “If things continue to be bad ... they will perish in the gravel.”

The problem is a shortage of water in Folsom Reservoir caused by the drought. Although the reservoir now holds more water than at this time last year, it is expected to be in worse shape by the end of summer.

That’s because the Sierra Nevada snowpack is at its lowest level in recorded history – just 8 percent of average as of Thursday. As a result, it will provide little runoff to refill the reservoir in the months ahead. Weather patterns diverted storms away from California most of the winter, leaving January and March as the driest in more than 100 years of record keeping.

The U.S. Bureau of Reclamation, which operates Folsom and Nimbus dams on the American River, dropped water flows in the river to 500 cubic feet per second on Thursday. That falls below a flow standard negotiated with the Water Forum to protect the river environment, but it is allowed in cases of severe drought, Gohring said.

“That was primarily an effort to help conserve water based on the persistent drought conditions,” said Reclamation spokesman Louis Moore. “Everything is being done to make sure the water supply we have is being used to the best of our ability, and we’re working with others to stretch it.”

Water stored in Folsom Reservoir serves a number of urban water suppliers in the Sacramento region, as well as farm irrigation districts in the San Joaquin Valley.

Reclamation has a limited ability to monitor temperatures in the river on its own. So the Sacramento Water Forum, which is funded mainly by local water agencies, hired a consultant to install temperature probes at strategic locations in the river. Those revealed that water temperatures have already exceeded 57 degrees, Gohring said.

The problem has been aggravated by record-breaking heat in the Sacramento area last week. On Friday, Sacramento Executive Airport saw a high of 83 degrees, breaking the previous record of 79 degrees set in 1986. Downtown reached 85 degrees, which tied the record from 1923.

Reclamation responded by boosting water releases from Folsom Dam. The water is being released from gates in the face of the dam – a rare occurrence – in order to access cold water deeper in the reservoir. That cooler water is expected to reach the lower American River, where steelhead spawn, starting Sunday morning.

The additional water flows will be temporary, lasting only into the afternoon on Monday. But officials hope it will be enough to help the emerging steelhead. Sacramento temperatures are expected to cool down to a more seasonable 70-degree range on Tuesday.

“If water temperatures become a detriment to fish, they will make an adjustment to try and cool the water a bit,” Moore said. “We are conserving as much as we can, and every little bit counts.”

The tight scheduling of water flows indicates how precious supplies have become.

If Reclamation lets too much water out of Folsom Reservoir to help steelhead, it could mean Sacramento’s urban areas won’t have enough when demand peaks this summer and fall. Reclamation projected last week that the reservoir will fall below 200,000 acre-feet by October, based on current water demands. At that level, Sacramento’s urban water suppliers get concerned about accessing water stored behind the dam, because their intakes are not much lower.

In case that happens, Reclamation has a contractor on standby to install temporary pumps to lift water into the intakes if necessary.

Avoiding that kind of problem will require area residents to continue working hard on water conservation, said Shauna Lorange, general manager of San Juan Water District, one of the agencies that could be affected if the lake level falls too low.

“Without the snowpack, we have less water for fish, we have less refill of the reservoir,” Lorange said. “It’s going to be more difficult this year.”

The conflicts are expected to intensify this summer, when winter-run Chinook salmon – also an endangered species – begin migrating downstream on the Sacramento River. An estimated 95 percent of the run perished last year because there wasn’t enough cold water to protect the fish.

Officials hope to avoid a repeat this year, so Reclamation is under pressure to preserve even more cold water in Shasta Reservoir. In the interim, this may mean it will use even more water from Folsom Reservoir to meet demands, which include its customers downstream and to satisfy state water quality rules that regulate salinity in the Sacramento-San Joaquin Delta.

Reclamation and the California Department of Water Resources have asked for an exemption to those water quality rules. That request is now being considered by the State Water Resources Control Board. Depending on how the request is granted, it could cause Folsom Reservoir to be drawn down much faster.

“Folsom could go dangerously low this year – potentially much worse than last year,” Gohring said.

Call The Bee’s Matt Weiser at (916) 321-1264. Follow him on Twitter [@matt_weiser](#).

THE FRESNO BEE

Jerry Brown signs drought relief package

By David Siders

dsiders@sacbee.com March 27, 2015

Gov. Jerry Brown signed a \$1.1 billion drought relief and flood protection package Friday, as California’s dry conditions stretch into a fourth year.

The package’s enactment marks the second time in two years that Brown and lawmakers approved emergency legislation related to California’s ongoing drought.

“This funding is just one piece of a much larger effort to help those most impacted by the drought and prepare the state for an uncertain future,” Brown said in a statement. “But make no mistake, from Modoc to Imperial County, rain is not in the forecast and every Californian must be doing their utmost to conserve water.”

The measure largely serves to allocate bond funds that were previously approved, including \$660 million for flood control projects and about \$273 million in water recycling and drinking water quality programs.

All but about \$30 million was proposed in Brown’s January budget plan. The relief package will accelerate spending – allocating money immediately instead of after the July 1 start of the next budget year.

The package includes about \$75 million in general fund spending for programs such as emergency food aid for farmworkers displaced by the drought.

Brown and legislative leaders announced the drought legislation last week. It moved quickly through the Legislature despite protests from Republicans who said bill language will unnecessarily extend government reach into water policy.

GOP lawmakers objected to provisions authorizing fines of up to \$8,000 for people who illegally divert water from rivers and streams, and to the creation of a new state office to promote wastewater treatment and other water projects.

Call David Siders, Bee Capitol Bureau, (916) 321-1215. Follow him on Twitter [@davidsiders](#).

THE FRESNO BEE

Westlands Water District hires Rep. Devin Nunes' top aide

By Michael Doyle

Bee Washington Bureau March 27, 2015

WASHINGTON — The politically muscular Westlands Water District is reinforcing its already estimable roster by hiring Rep. Devin Nunes' chief of staff.

Tulare native Johnny Amaral, the longtime top staffer for Nunes, will start May 1 as the water district's deputy general manager for external affairs. The newly created position will oversee the district's lobbying, governmental and media operations.

"He's going to bring his experience working with people at all levels of government around the Valley," Westlands general manager Thomas W. Birmingham said in an interview Thursday, adding that Amaral is "in a unique position to help us try to develop a solution for our water supply shortages that will unify the entire Valley."

The 40-year-old Amaral will be paid \$250,000 a year, approximately a 55% boost from his current House of Representatives' salary.

A 1997 graduate of Fresno State, where he earned a degree in liberal arts, Amaral has served as Nunes' chief of staff since the Republican congressman first took office in 2003.

Although based in Nunes' congressional district, Amaral has also been a frequent flier to Washington. He said he's likely to keep up his cross-country travels in his new job, combined with new forays into Sacramento on state legislative and regulatory business.

"I've spent most of my time while working for Devin, working on water issues," Amaral said. "It seemed to me, this might be a way to affect the issues from a different angle."

Amaral said he will not be registering as a federal lobbyist. The 615,000-acre water district, the nation's largest, already has a sizable crew working on its behalf.

Westlands reported paying a total of \$730,000 to four separate federal lobbying firms last year, [disclosure statements show](#). In Sacramento, the district employs a different lobbying firm for state matters. The district's [direct employees include](#) general counsel Craig Manson, who formerly served as the assistant secretary of the interior during the George

W. Bush administration, and chief deputy general manager Jason Peltier, who also formerly served in the Interior Department.

Even so, Birmingham said that he created the new job in part because he has been “pretty busy” juggling legislative and media challenges on top of administering the district. Like Amaral, he has been flying frequently to Washington; particularly last year, as lawmakers struggled to write water legislation.

Roughly the size of Rhode Island, Westlands has a big stake in legislative efforts to secure increased irrigation water supplies and increased water storage, among other priorities. On Capitol Hill, Democratic Sen. Dianne Feinstein has renewed efforts to craft a bill this year.

“We work with elected officials, regardless of partisan politics,” Birmingham said.

Birmingham said he first contacted Amaral about a possible job three weeks ago. Last week, as their conversation accelerated, Amaral said he began recusing himself from further participation in Capitol Hill water discussion.

“While I’m sad to lose Johnny, I think his hiring by Westlands is a positive sign that the water district intends to take a more engaged, pro-active approach to solving the water crisis,” Nunes said.

Amaral will be replaced as Nunes’ chief of staff by Anthony Ratekin, another Valley native who previously served as field representative.

SAN FRANCISCO CHRONICLE

California drought: Sierra Nevada snowpack hits historic low

By [Peter Fimrite](#)

Updated 6:32 am, Saturday, March 28, 2015

The abominable snowpack in the [Sierra Nevada](#) reached an unprecedented low this week, dipping below the historic lows in 1977 and 2014 for the driest winter in 65 years of record-keeping.

Electronic surveys show the water content of the snow throughout the Sierra is a shocking 8 percent of the historical average for this time of year, by far the driest it has been since 1950, the year record-keeping began, because of the lack of rain and snowfall and the exceedingly high temperatures. It is a troubling milestone that water resources officials say is bound to get even lower as the skies remain stubbornly blue.

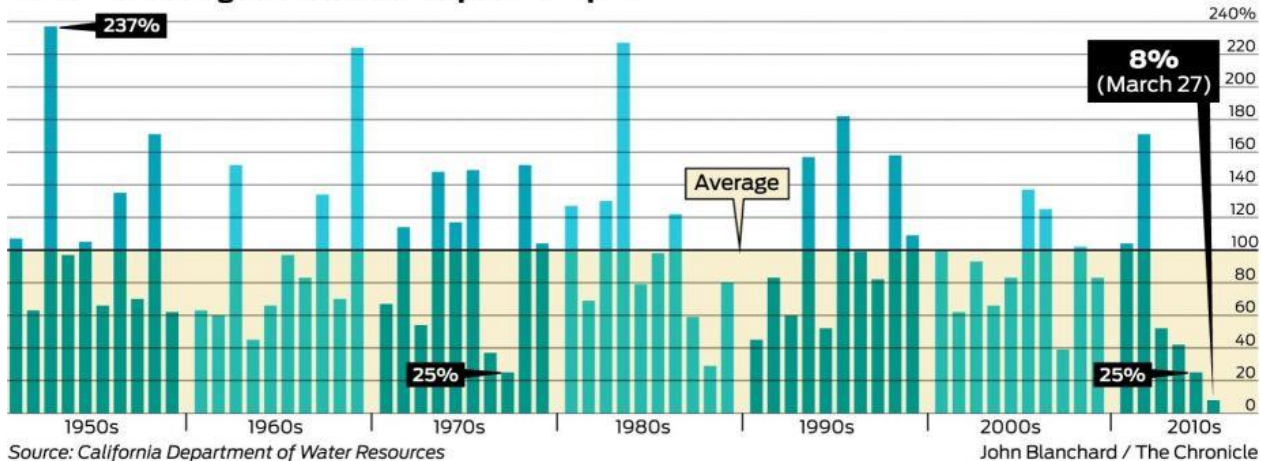
“It’s certainly sobering when you consider that the snowpack in a normal year provides about 30 percent of what California needs in the summer and fall,” said [Doug Carlson](#), the spokesman for the [California Department of Water Resources](#). “What this suggests is that we will have very little water running off. It accentuates the severity of the drought and emphasizes the importance of people cutting back on their water use.”

The department is planning to conduct its monthly snow survey on April 1, the date water resources officials use as a benchmark because it is when the snowpack normally begins to melt and fill up the state’s reservoirs. Meteorologists see nothing on the horizon that could pull the state out of its increasingly frightful drought.

Low snow level

Reports from sensors in the Sierra show the snowpack for April to be the lowest recorded since 1950.

Percent of average statewide snowpack for April 1



The snowpack is already far below the historic low, which happened in 1977 and again last year, when the snowpack was 25 percent of normal on April 1.

The surveyors measure the depth and water content of the snow in 230 places, called snow courses, in the mountains stretching from north to south. Their results are combined with electronic measurements taken from as many as 130 places around the Sierra to calculate California's drinking water supply for the year.

The state has been publishing statewide snowpack measurements in the Sierra since 1950, but there are several places where measurements go back as far as 1926. At [Phillips Station](#), near the Sierra-at-Tahoe resort, an average of 66.5 inches of snow is normally on the ground on April 1. "We don't expect to find any snow up there on Wednesday," Carlson said Friday. "It's pretty spooky."

The snow in the Sierra has been declining since the first seasonal snow survey Dec. 30, when electronic readings found the statewide snow water content was 50 percent of normal for that date. That survey followed several storms in December.

But the readings plummeted to 25 percent of average on Jan. 29 and 19 percent of average on March 3.

The measurements are important because snow makes up 60 percent of the water that is captured in California's reservoirs when it melts in the spring and 30 percent of the state's overall water supply during a normal year.

Curiously, California's biggest reservoirs have managed to hold steady despite the dismal snowpack. Shasta Lake, the state's largest reservoir, has 74 percent of what it normally holds at this time of year. Lake Oroville, the second-largest reservoir and the most important source for the State Water Project, is carrying 67 percent of what it normally holds at this time of year.

Shasta and Oroville carry 80 percent of the state's reservoir supply. The water is used to irrigate 8 million acres of farmland and quench the thirst of close to 30 million people.

The problem, experts say, is that the reservoirs will not be getting much additional supply from snowmelt, a crucial source in California's dry Mediterranean summer climate.

Meanwhile, the reservoirs that serve farming communities are wretchedly low. Pine Flat Dam on the Kings River is only 32 percent of normal, and Exchequer, or [McClure Dam](#), on the Merced River stands at only 16 percent of normal. Some of the smaller reservoirs are in real danger of going completely dry this summer.

ENSIA

How one California farmer is battling the worst drought in 1,200 years

California's byzantine water system and crushing drought are leading farmers to extraordinary measures as they try to keep themselves from running dry.

Writer [Sena Christian](#)

[@SenaCChristian](#) Freelance journalist

March 26, 2015 — *Editor's note: This story was produced in collaboration with the [Food & Environment Reporting Network](#), a non-profit investigative news organization.*

On a warm March afternoon, farmer Cannon Michael walks alongside wheat fields adjacent to his house in Los Banos, in California's Central Valley. Most of these fields won't be watered again this year.

"Wheat's not a glamorous crop, but it makes a lot of bread," Michael quips.

This wheat, though, won't return much money, Michael says. So it will be harvested for his sister's two bakeries in San Francisco and the land fallowed, along with some fields formerly planted in alfalfa and cotton. They are among more than 1,000 acres Michael left unplanted this season to try and conserve water, amounting to about 10 percent of the 10,500 irrigated acres that make up his farm, Bowles Farming Company. Walking past the fields with his wife, Heidi, and their three young sons to a nearby barn with goats and sheep, Michael jokes about an imaginary Taylor Swift song called, "Sheep It Off," much to his kids' dismay.

Michael has a humorous side, but laughter can't mask the rough reality of farming today in the Central Valley, a place famed for its abundant bounty of fruits and vegetables. By the spring of 2014, the region's farmers had gone into survival mode. They hoped to secure enough water for a decent harvest, but last summer about 15,000 farmers on San Joaquin Valley's east side received [zero allocations](#) of water from the Central Valley Project, the federal project in charge of storing and managing much of California's water. The state's [worst drought](#) in 1,200 years ravaged the region.

The drought, in combination with this long-established government system for deciding who gets water and who does not, has split the valley. Now Michael's life, it seems, is almost exclusively focused on finding ways to conserve water and helping his neighbors who lack the precious resource. There's no time to waste. If Michael and his peers can't figure out a way to conserve and share the water that remains, one of the world's most productive agricultural regions will be jeopardized. California agriculture is a [\\$46 billion industry](#), and the Central Valley alone produces nearly half of the United States' vegetables, fruits and nuts in its Class 1 soil — the highest quality.

The Headwaters

Water here has always been in relatively short supply. Head west of the 100th meridian in the United States and rainfall becomes less prevalent, making irrigation necessary for cultivating crops. Aridity varies even within California, with most precipitation happening in the north and most agriculture in the south.

To bring the water south, the federal government authorized the [Central Valley Project](#) in 1935. The project involved the construction of dams, reservoirs, canals, conduits and tunnels that make it possible to transport water from the state's largest reservoir, the now shrinking Shasta Lake in northern California, south about 450 miles to Bakersfield. There, the

water is allocated to customers for various uses, including to irrigate about 3 million acres of farmland — about 38 percent of the state's [7.9 million acres](#) of irrigated farmland.

When his neighbors on the east side of the valley were struggling last spring, Michael saw frustration and heartbreak all around him.

The Central Valley Project is one of California's two largest water projects. The other, the [State Water Project](#), began in the late 1950s and now supplies water from northern state rivers for 750,000 acres of irrigated farmland and 25 million residents in the south. Most farmers contract to receive a specific amount of water from one of these two projects, but the byzantine system of allocations means that some farmers are at the front of the line for water, while others stand much further back. In a time of drought, a lack of access to this water can be fatal.

A Friendly Deal

When his neighbors on the east side of the valley were struggling last spring, Michael saw frustration and heartbreak all around him. Workers were laid off, land for row crops fallowed and high-profit almond orchards ripped out because they were too water thirsty. Water traded hands on the open market at rates much higher than usual. These were his friends and colleagues, and the men and women responsible for supplying much of the country's tomatoes, carrots, grapes, apricots, and asparagus and [80 percent](#) of the world's almonds.

In response, Michael and some of his peers who had water did something unprecedented: They implemented conservation measures and fallowed land early in last year's season to make 13,500 acre-feet (4.4 billion gallons) of water, from a reservoir known as Millerton Lake, available to east-side farmers who had been cut off. And they did so at an affordable price.

This was the first time in Bowles' history the company — along with other west-side farmers — exercised its rights to take their allotment from Millerton Lake. Michael says he didn't want to put a call on his historic water source, but felt he had no choice. He wanted to find a way to help his east-side neighbors by fallowing land and putting some extra water back on the market for junior users.

"You can't survive on zero allocations," Michael says. "It's not going to work."

While water sales, or "transfers," occur regularly each year, shifting surface water to farmers in need, the process is not as simple as it might appear due to California's complicated [dual water system](#). Just who gets surface water, how much and in what order is determined by that system, which incorporates both riparian rights (access for those adjacent to waterways) and prior appropriation, which gives senior rights to those who first diverted water for beneficial use. Meanwhile, to get a groundwater right, for the most part a user need only drill a well.

"Cannon is a friend and a great farmer, but his world is considerably different than mine because of senior water rights."
- Chris Hurd

The Water Commission Act of 1914 established today's permit process for surface water and the agency — now the State Water Resources Control Board — to administer it. Farmers with junior rights need a permit; those, like Michael, with pre-1914 rights — senior rights — don't.

What made last year's transfer different from a typical water deal is that the senior appropriators priced water at \$250 per acre-foot, while other sales at the time priced water between \$1,000 and \$2,000 per acre-foot. Had they sold at the higher price, the senior appropriators could have made \$27 million, according to a [local news report](#).

"We saw an opportunity to transfer some water to our neighbors who were struggling," Michael says.

Chris Hurd, a fourth-generation farmer with junior rights in the San Joaquin Valley with 1,500 acres — row crops, almonds and pistachios — says he doesn't begrudge senior appropriators for exercising their right last year. Though Hurd wasn't a recipient of last year's transfer, he commends what his fellow farmers did, while acknowledging they were privileged enough to make that move.

"Cannon is a friend and a great farmer, but his world is considerably different than mine because of senior water rights," Hurd says.

While Michael thinks it's too soon to say whether another transfer can happen this year, Hurd says there's not even enough water in the system to move around. The 33-year-veteran farmer doesn't know what will happen to his business in the coming years. But the outlook isn't good. Though he has transitioned his farm to 100 percent drip irrigation, he removed 120 acres of almonds from production last year and may soon fallow another 80 acres.

"[The drought] is not easy," he says. "It's very complex, it's very emotional, and I just say a little prayer for my grandkids that they get to farm one day."

A Permanent Fixture

Michael's water rights go back generations. His great-great-great grandfather was Henry Miller, "the Cattle King," who emigrated from Germany in the 1800s and became one of the largest landowners in the United States. A plaque in Henry Miller Plaza in downtown Los Banos — a city of about 37,000 — notes his importance: "Miller created one of the West's largest water irrigation systems, a series of gravity-fed canals ... dug to transport water from San Joaquin River to the fertile farm fields."

Growing up in San Francisco, Michael spent summers working at Bowles Farming Company, which his grandfather and great-uncle had started in the 1960s. After receiving an English degree from the University of California, Berkeley, Michael moved to Atlanta to work in real estate. In 1998, he returned to his family business after the uncle in charge of Bowles fell ill, and in January 2014 he became president, overseeing crops of cotton, alfalfa, corn, wheat, tomatoes, onions, melons and almond trees (planted a few years ago, before the drought got really bad). He also manages 650 acres as waterfowl habitat.

Michael has also become a leader of collaboration among his peers; his Twitter profile says, "Ag interests need to unite." The 43-year-old, sixth-generation farmer aims to "keep California farmers farming," he says, with the fourth year of drought looming.

In addition to the water transfer, Michael has reduced tillage to help the soil retain more water. He's also part of a University of California Cooperative Extension team evaluating how drones can save water by, for example, capturing detailed data to pinpoint irrigation leaks for immediate repair.

At Bowles, stacks of PVC pipes lie in wait around the farm to be buried in trenches for drip irrigation. Almost half of the farm is now on drip, and Michael expects to eventually get to 70 percent. Up-front costs aren't cheap — \$1,500 per acre in materials and labor to install — but drip irrigation saves substantial amounts of water and labor and improves yield, he says. Bowles previously flooded cotton fields, requiring six acre-feet of water; drip irrigation cuts that water consumption in half.

The Drought's Toll

The multi-year drought has shown the chain reaction of drastic water shortages: from farmers leaving land fallow, resulting in less food, to dropping incomes to less work available for farmworkers to harming the state's economy. About 17,100 jobs have been lost, and the drought cost the agricultural sector an estimated \$2.2 billion in lost crop

revenue and wages and increased groundwater pumping last year, according to a July 2014 [UC Davis Center for Watershed Sciences report](#). Researchers estimated that by the end of 2014 at least 410,000 acres in the Central Valley would be followed.

Making matters worse, Stanford scientists recently released a [major report](#) finding that climate change will likely make drought a permanent fixture in California. By early March, about 94 percent of the state remained in [severe drought](#) and the [statewide snowpack](#) was about 19 percent of historical average. Michael calls snowpack the state's "bank account to get through the year" because during drier months waterways draw on the snowpack for replenishment. At 19 percent, Michael says, "we don't have a bank account."

On March 12, an [op-ed by Jay Famiglietti in the Los Angeles Times](#) brought more dire news, stating that California has only about one year of water left in its reservoirs and noting that groundwater and snowpack levels are also at all-time lows. Famiglietti, senior water scientist at the NASA Jet Propulsion Laboratory, wrote that NASA satellites show the total amount of water stored in all the snow, soil, groundwater, rivers and reservoirs in the Sacramento and San Joaquin river basins was 34 million acre-feet below normal in 2014.

All of this is leading farmers to drain the state's underground aquifers, causing the valley to sink. Groundwater used to be how farmers supplemented water needs, but as the drought continues, it has become the go-to source. The [Sustainable Groundwater Management Act](#) took effect January 1, 2015, to address overpumping, but the [legislation](#) doesn't immediately stop the practice, instead requiring the formation of local agencies to adopt sustainability plans within five to seven years. Plan objectives must then be achieved within 20 years. Michael dug wells on his farm, he says, "as an insurance policy in case we have to use them." He'd rather not.

"We're not just up a creek without a paddle in California," Famiglietti wrote in the *LA Times*, "we're losing the creek too."

Of 27 major rivers, 16 had allocations greater than 100 percent of natural supplies; the San Joaquin River had the highest allocation level at 861 percent.

Besides the drought, problems seem to stem from poor accounting of water usage. The state's water right allocations now total five times more surface water than is available in a good rainfall year, and regulators struggle to figure out whose supplies to cut during a drought because of inaccurate reporting from water appropriators and the complicated water-rights system, according to a [UC Davis](#) report published in August.

Ted Grantham, formerly a postdoctoral researcher at the university who now works as a research biologist for the U.S. Geological Survey, and colleagues analyzed all post-1914 appropriative water rights, which includes state allocations and allocations from the federal Central Valley Project (riparian and pre-1914 rights were excluded because they're not fully accounted for in the state's database) and found that allocations exceed surface water supply by about 300 million acre-feet — more than five times the 70 million acre-feet available in a good rainfall year. Of 27 major rivers, 16 had allocations greater than 100 percent of natural supplies; the San Joaquin River had the highest allocation level at 861 percent.

The researchers also found that most water right holders have a permit but not a license. Permits spell out the specific parameters of proposed projects to divert water for beneficial use, and the license is supposed to be the final confirmation of a water right, issued once the project has been completed and inspected. The licensing stage should be a time for review, but the State Water Board isn't seeing permits through to this point. If it did, Grantham says, it might help with the overallocation issue. "That's an opportunity to modify water rights and bring them closer to reality in terms of what is actually being used," he says.

Trying to Find a Solution

In February, the U.S. Bureau of Reclamation once again [allocated no water](#) deliveries from the Central Valley Project for junior appropriators. Municipal and industrial users will get 25 percent of their historic use or enough to meet health and safety needs. Though the project is obligated to deliver 75 percent of requested amounts to senior appropriators, Michael is expecting to get a 40 percent supply because this is a “critical year” for Shasta Lake. Michael says the project’s obligation can be broken by a provision in the contract known as an “Act of God” provision, which includes drought conditions.

The nonprofit [Water Education Foundation](#) recently named Michael to its board of directors, through which he’ll work with businesses, environmentalists and water agencies to raise public awareness about water as a valuable and limited resource.

“I’m pretty proud of that, actually,” Michael says, as he drives his pickup truck fast down an empty country road to the Bowles almond orchard. “That’s a group trying to take a nonpartisan look at the water situation, and they didn’t have any farmer on there.”

As Michael keeps implementing new methods and forging new partnerships, it’s clear he’s on a sort of mission. “I don’t know what the answer is,” he says. “But I’m going to keep trying to find it.”

For more photos from Sonya Doctorian, see [“A thirst for solutions.”](#)

THE GUARDIAN

Groundwater records should not be kept confidential in drought-stricken California

The state’s database of 800,000 well logs is not publicly available because of a 64 year-old law that considers them proprietary to well drillers

[Laurel Firestone](#) and [Thomas Harter](#)

Friday 27 March 2015 08.07 EDT Last modified on Friday 27 March 2015 09.44 EDT

Imagine having two bank accounts with money for your everyday needs, only one of them – the one you draw from when the primary account runs low – is a virtual black box. You really have no idea what the balance is, and there is no record of deposits and withdrawals.

This is how water is managed in [California](#), with 38mn people and the world’s eighth largest economy. In years of “normal” precipitation, the semi-arid state gets most of its water supply from winter rain and spring snowmelt. However, when this “primary account” of surface water supply dwindles during droughts, farms and communities rely heavily on a mystery account called groundwater, which truly is out of sight and, unfortunately, out of mind.

Few people have information about the underground stores that provide up to 60% of the state’s water supply during droughts, including water to about 600,000 relatively shallow domestic wells, located mostly in rural areas.

State records that provide information needed to characterize groundwater aquifers are kept confidential under a 64-year-old law that considers them proprietary to well drillers. Known as well logs, the records contain data that is public in every other western state – details such as where wells are located, their depth, potential pumping rates, diameter and descriptions of the groundwater-bearing sediments and rocks they are bored through.

Because the state's database of 800,000 well logs is not publicly available, local agencies, consultants, academics and communities looking for safe water supplies must develop their own information in order to develop groundwater models, discover the water quality characteristics of a basin, or determine which wells are likely to go dry. Where local agencies can't afford it, the costs of this restrictive policy have prevented local basin characterization altogether.

Meanwhile, residents reliant on wells are running out of water across the state, from the small farm communities of Orange Center and Easton in the San Joaquin Valley to the foothill communities of the Sierra Nevada. In homes that have run completely out of water, families must use a bucket or a bottle of water to brush their teeth, make coffee, wash dishes, flush a toilet, and even wash their hands.

In the Tulare County town of Poplar, which has a population of 2,500, groundwater levels have dropped so much that the community had to draw from a backup well known to be contaminated with high levels of nitrates from agricultural fertilizer.

And all too often, neither the well owners nor local water managers have the information they need to protect their wells and predict when and where wells will go dry – as the community of East Porterville discovered last summer when more than 600 wells failed. The lack of information is a major impediment to stewardship of the resource.

California wells went dry by the thousands last year and thousands more will follow suit this coming summer, but communities can't access data about what parts of the groundwater system around them have been tapped, which wells are at risk or what the water quality is. This information is needed to understand how drought and groundwater development impact local water supply and how to respond quickly and effectively. When the state legislature passed historic groundwater legislation last year, it stopped short of changing the law and providing critical information needed for sustainable groundwater management.

The lack of transparent well log data is holding back innovation and solutions at a time when they are needed most. Making these records publicly available would incentivize better data management on this important resource and better science to understand both groundwater supply and pollution. At best, the lack of publicly accessible well logs is slowing down progress toward sustainable groundwater management. At worst, it's thwarting progress entirely. Making well logs accessible would create opportunities to invest in groundwater management projects and public-private partnerships that will develop more effective and cost-efficient solutions for California's groundwater.

Over the last year, the state has spent more than \$20 million in emergency drought relief to help communities like East Porterville. Without access to the data and tools necessary to prevent acute drought impacts in the state's most vulnerable communities, however, the intensified drought will cost the state and local residents far more this coming summer.

The California Assembly passed a resolution earlier this month to celebrate "the public's commitment to openness". The first line of the resolution reads: "California has a long tradition in support of open government and access to government records".

[Senate Bill 20](#), introduced by State Senator Fran Pavley in December, would make well log data publicly available in California. Perhaps as more community and farm wells dry up this summer, the legislature will extend its enthusiasm for transparency to the critical information needed for more equitable and sustainable management of our groundwater.

Billion-dollar water bills signed by governor more about flood than drought

By AP and Staff Reports

Posted: 03/27/15, 5:28 PM PDT |

Sacramento >> In the midst of the worst drought in a generation, Gov. Jerry Brown signed legislation Friday that speeds up \$1 billion in water infrastructure spending, but the majority goes to dealing with too much water rather than too little.

Nearly two-thirds of the water package — \$660 million — goes to shore up flood protection structures to prevent mudslides and sudden storms from overtaking communities. Voters first approved this spending in 2006 after Hurricane Katrina.

About \$33 million goes to provide food and water aid for people affected by the drought, with another \$18 million for environmental impacts. There's \$3 million for Cal Fire stations that have run out of water. The rest is longer-term spending that won't bear fruit for months or years.

"This funding is just one piece of a much larger effort to help those most impacted by the drought and prepare the state for an uncertain future," Brown said in a statement as he signed AB91 and AB92.

He added that no area of the state has rain in the forecast "and every Californian must be doing their utmost to conserve water."

The longer-term spending in AB91 includes:

- \$131.7 million for the existing water recycling grant program for feasibility studies, demonstration projects and larger-scale water recycling projects.
- \$69 million to improve disadvantaged communities' access to clean water.
- \$66 million to help small communities pay for wastewater treatment.
- \$30 million to improve water project efficiency to reduce greenhouse gas emissions.
- \$4.4 million to provide local communities with technical guidance and disaster recovery support related to the drought.

There's also \$4 million to control invasive aquatic plants in the Sacramento-San Joaquin Delta and \$200,000 to study the impacts of California's drought on agriculture and identify solutions.

The full text of AB91 can be read at <http://tinyurl.com/ot4ro64>.

Lawmakers said they need to kick-start water projects early, especially as fear mounts that California is in the middle of a long-term "megadrought."

"Part of it is about preparing for tomorrow and the continuing drought if it gets worse," Assembly Speaker Toni Atkins, D-San Diego, said after the vote Thursday. "I hope this is not the new normal, but we need to act as if it is."

Republican lawmakers say the best way to deal with California's long-term water woes is by speeding up construction of reservoirs. Voters last year approved \$2.7 billion for water storage as part of a sweeping bond measure, but the California Water Commission says it won't start funding projects until December 2016.

"We have to work together to expedite projects that will increase long-term supply," said Assembly Minority Leader Kristin Olsen, a Modesto-area Republican.

CHICO ENTERPRISE-RECORD

Farmers gather at UC Davis to talk about drought

By Sarah Dowling, Woodland Daily Democrat

Posted: 03/26/15, 4:18 PM PDT |

Davis >> California farmers gathered at UC Davis Wednesday to discuss the most pressing issue currently affecting agriculture — the drought.

"The agricultural sector needs to be a part of climate change to help come up with solutions and make a difference," said keynote speaker Ken Alex, senior policy adviser to Gov. Jerry Brown.

Alex's statement set the tone for the day-long event, hosted by the California Climate and Agricultural Network, a coalition formed out of concern for climate change and its effect on agriculture.

Now in its fourth year, the Climate and Agriculture Summit brought together farmers, ranchers, educators and policy makers to look for ways to deal with the drought, including conservation and management methods.

To learn about the drought's ripple effects from those who experience them first-hand, a trio of ag representatives — Tom Willey, Joe Morris and Jutta Thoerner — shared their perspectives.

Willey and his wife Denesse own and operate T&D Willey Farms, a 75-acre certified organic operation in Madera County.

Willey, who started his farm in 1981, said in his region everyone is drilling wells because the Madera Irrigation District has no water to allocate to farmers. More than five years ago Willey drilled a new 500-foot well on his property, right before it started getting drier.

"It's just a matter of time for all of us," he said, referring to wells drying up.

Willey equated the planting of almond trees to the California Gold Rush, stating farmers are pulling out other crops to make room for rows upon rows of nut trees, which use more water.

Thoerner is seeing the opposite near her 200-acre farm in San Luis Obispo County, where she specializes in walnuts.

"A lot of people are pulling out or abandoning trees and planting wine grapes," she said.

In terms of her experience with the drought, since Thoerner dry farms her orchards, she depends on the rain more than others. With the lack of precipitation, she noticed a 30 percent drop in her yield since the drought began.

Not only are her trees producing less, the nuts that are produced are much smaller, prompting her to call them "babies."

Morris takes the perspective of a rancher.

In 1991 he and his wife Julie founded San Benito County's T.O. Cattle Company, which specializes in grass-fed beef.

Raising animals instead of crops presents a different set of challenges — water is needed both to quench his herd's thirst and to keep grass alive, which is essential with grass-fed beef.

"A lot of ranchers are selling off livestock," he said, noting it could be a "help and a hinderance."

Specifically, less cattle means more water for other things, but less meat for consumers, he added.

As their discussion continued, moderator Kellyx Nelson of the San Mateo County Resource Conservation District asked each panelist what they were doing to conserve water and manage their businesses.

Willey said his farm has run on drip irrigation for more than 20 years. This system brings water directly to the roots instead of elsewhere in the fields so less water is wasted. He has had to eliminate a number of crops that do not produce well in a drought, focusing efforts on ones that do.

Thoerner utilizes sheep to graze around her 10-acre vineyard "to help maintain the moisture in the soil."

While Thoerner and Willey discussed conservation methods, Morris said it is important for farmers and ranchers to take time off from worrying about the drought because this can cause a whole new set of problems.

"The drought is an emotional roller coaster," Morris said. "You can get depressed thinking about it."

After hearing from the panel, longtime farmer Judith Redmond approached to podium to share her thoughts on climate change.

In 1989, Redmond co-founded Full Belly Farm, a 350-acre operation in the Capay Valley.

During her brief presentation, Redmond said everyone needs to work together to combat climate change and find solutions.

"Leadership is needed from all of us to convince the public that farmers and agriculture are a climate change investment that will pay off dividends to all of us, the environment, the economy, and for rural communities," Redmond said.

E&E DAILY

DROUGHT: S. Calif. water district exerts heavy influence on legislative negotiations

Debra Kahn, E&E reporter

E&E Daily: Friday, March 27, 2015

As congressional talks continue over California's historic drought, one participant in the negotiations has been more influential than it has claimed.

Metropolitan Water District, a consortium of 26 public agencies that supplies water to 19 million people in Southern California, sent Sen. Dianne Feinstein (D-Calif.) and Rep. Jim Costa (D-Calif.) proposals for managing the state's water that made it into bills that passed both houses last year, according to documents obtained through a California Public Records Act request.

Emails between Met staff, Feinstein's staff and others also reveal extensive negotiations last year over a draft bill by Feinstein that never got introduced but has been under discussion again this session. Most of the proposals focused on tweaking the way Endangered Species Act protections are applied in the Sacramento-San Joaquin River Delta, the source of water supplies for 25 million people and 3 million acres of farmland via two giant systems of canals and pumps.

Met supplied the documents Dec. 5, 2014, in response to a request from environmental groups, which along with House Democrats were clamoring to be included in negotiations.

The emails underscore the role of urban water districts in the negotiations. Much of the back-and-forth negotiations has been portrayed as agricultural contractors in the Central Valley pushing back against water reserved for endangered species via a set of much-litigated biological opinions, which kick in when chinook salmon or delta smelt are moving through the system, limiting the amount of water that the state and federal governments can pump to customers.

But Met -- the largest supplier of drinking water in the country -- has also been a prime mover behind the congressional push, which drew a veto threat from President Obama last February and again in December, when the House passed bills from Rep. David Valadao (R-Calif.) that would have gone much further than the Feinstein bill in guaranteeing water deliveries for state and federal contractors. After months of negotiations last summer and fall between Feinstein, Costa and California's Republican House delegation, members withdrew after failing to get language included in the omnibus spending bill at the end of 2014, vowing to resume talks this year.

Met has claimed limited involvement in the debate over the Feinstein bill, but the emails show otherwise.

On Nov. 18, 2014, Met's general manager, Jeffrey Kightlinger, told his board members that the agency's involvement in the under-wraps Feinstein bill was limited. He emphasized that conversations with Feinstein's staff were "technical" and said he was ignorant of the bill's overall policy direction.

"I presume our input is not encouraging her to gut the Endangered Species Act in any way?" board member Paul Koretz asked.

"No, and frankly, most of our conversations have really been very technical, on issues -- impacts that would -- if you did a certain action, what would the impacts be potentially to the State Water Project, both pro and con, and those sorts of things," Kightlinger said. "So it's been pretty technical. She's keeping her policy cards close to her vest as to where she wants to go on policy, but her staff is doing a lot of reaching out to make sure the technical details are correct."

Koretz asked again: "And as you said, we haven't seen anything to lead us to believe that the Endangered Species Act would be negatively impacted by this bill?"

"Not in my view, no," Kightlinger replied.

The two-minute exchange between Koretz and Kightlinger didn't make it into Met's board meeting [minutes](#) the next month. On Dec. 9, the minutes were amended to reflect the exchange.

Kightlinger said such an aside wouldn't normally be included in the minutes and that it was added in later at Koretz's request.

He also said he stood by his statement that Met's involvement was "technical" rather than policy-oriented.

"What we looked at, I would consider pretty technical," he said, "where there was room for adaptability or flexibility within the biological opinions, which are, frankly, highly technical."

A statewide powerhouse

Met is the largest customer of the State Water Project, a massive midcentury system of canals and pumps that is intended to deliver more than a billion gallons per day from the delta to Southern California via a 440-mile aqueduct. It also takes 800 million gallons per day from the Colorado River, 240 miles away.

This year, however, the drought has reduced delta deliveries by about two-thirds, leaving a gap of about 500,000 acre-feet to be filled by conservation and mandatory water pricing, set to be voted on next month by Met's board. Met is governed by a board of 37 members, appointed from its various member agencies, but its executive staff is in charge of day-to-day operations.

Major players in the negotiations, according to the emails, were Met Assistant General Manager Roger Patterson; Westlands Water District General Manager Tom Birmingham; Met Special Projects Manager Brenda Burman, a former counselor to the Interior Department's assistant secretary for water and science and later deputy commissioner at the Bureau of Reclamation under President George W. Bush; and David Bernhardt, former Interior solicitor under Bush and a current attorney and lobbyist for Westlands, a major agricultural water contractor in the San Joaquin Valley.

On Feb. 5, Metropolitan staff reviewed proposed bill language from Feinstein staff that would allow the National Marine Fisheries Service to modify import-export ratios for water coming into and leaving the delta, in order to allow water transfers that exceeded levels established to protect steelhead salmon in the San Joaquin River.

Patterson [asked](#) Met lawyers to vet some bill text that Feinstein legislative assistant Felix Yeung sent to Patterson under the heading, "Your language."

"Can you both take a look at this ASAP and confirm that you believe NMFS would have discretion under the BiOp to do this? It's intended to let them allow 1:1 pumping of any transfer water no matter what the underlying base ratio may be," Patterson wrote.

The 2009 biological opinion, which protects endangered salmon in the delta, likely did not envision water transfers, so exceeding the ratio should be permitted, Met Deputy General Counsel Linus Masouredis wrote.

The language showed up in Feinstein's [S. 2918](#), which passed the Senate on May 22 under a "hotline" procedure that did not allow any hearings (*E&E Daily*, May 23, 2014). It also appeared in Valadao's [H.R. 5781](#), which passed the House in December.

In June, Burman sent Costa's chief of staff, Scott Petersen, a six-page [summary](#) of aspects of the Feinstein bill that Met supported and a list of additional proposed changes to ESA implementation, including placing an "indefinite hold" on parts of the biological opinion protecting salmon, such as restrictions on exports and river flows.

Another example of the tweaks Met proposed concerned a provision in the biological opinion that limits withdrawals when smelt are near the pumps. Burman sent [language](#) to Feinstein and Costa staffers July 22, 2014, that would require the Interior Department to conduct modeling to see whether fish might be near the pumps, in addition to relying on manual surveys and measurements of water conditions when deciding whether to limit pumping.

"By requiring a reporting it is hoped that ... the Secretary will have to account for modeling and the presence or absence of fish in the river," Burman wrote to John Watts, Feinstein's legislative director.

Watts then emailed them draft bill language on July 29, the day before he sent it to Obama administration wildlife officials for vetting. He also sent a draft to officials from two other major water interests in the Central Valley: the Kern County Water Agency and Paramount Farms, the massive, privately held fruit and nut grower that processes more than half of the pistachios grown in California, under the brand name Wonderful Pistachios.

"I would appreciate your thoughts on the attached draft water bill language, which I have developed working with Metropolitan and Westlands," he [wrote](#).

Pushback from Obama officials

The emails show a flurry of activity in September, after Feinstein gave Watts the green light in late July to share the bill with the Obama administration. They also show administration officials pushing back on the Feinstein draft bill in an attempt to enforce the ESA.

"The original language puts Reclamation and the Services in the position of potentially violating the measures in the opinions required to prevent jeopardizing the species," officials from the Fish and Wildlife Service and the National Marine Fisheries Service wrote in the revisions, which Watts [sent](#) to Westlands and Met staff on Sept. 6, 2014.

"I do think we have to respect the Administration's conclusion that a mini-jeopardy analysis would not work and would constitute a significant amendment to the ESA," Watts then [wrote](#) to Birmingham, Burman, Bernhardt and Patterson on Sept. 13, 2014. "We don't have to accept their substitute, however."

Watts said that NMFS West Coast Regional Administrator Will Stelle's suggestion to work within the biological opinions might be more politically feasible.

"I believe we need to try this approach because it has two very significant and probably essential advantages: 1) It allows us to say that we are working with the BiOps rather than overriding them, which is politically essential; and 2) It helps protect us from enviro lawsuits that we are going outside the biops, requiring reconsultation," he wrote.

Kightlinger said he stood by his statement that the draft bill wouldn't have weakened the ESA, despite the administration's findings. "My language was that there was nothing we have provided that in our view would amend or change the Endangered Species Act, and I don't believe there is," he said.

An environmentalist who has been following the negotiations said the proposals were aimed directly at weakening the law. Several of Burman's suggestions, such as lifting flow restrictions in the San Joaquin River, were also sought in a 2009 lawsuit from Met, Westlands, Kern and others. The 9th U.S. Circuit Court of Appeals upheld the existing regulations in December (*E&ENews PM*, Dec. 22, 2014).

"It would definitely weaken protections for endangered species in the delta, there's no question about it," said Doug Obegi, a staff attorney with the Natural Resources Defense Council. "Those are provisions that were litigated and the court upheld, and now Met is seeking to get Congress to waive those protections for endangered steelhead."

Other emails that environmental groups obtained from Westlands also show Bernhardt and Birmingham working with Valadao's staff on the bill that passed the House in December 2014 (*E&ENews PM*, Dec. 9, 2014).

"Where can I find the latest numbers for the amount of water that has been dumped into the ocean for fish etc?" Valadao's legislative director, Jessica Butler, [wrote](#) to Birmingham and Bernhardt on Dec. 8, 2014, at a House Rules Committee hearing the day before the bill passed the House.

Met voted to [oppose](#) the first Valadao bill last March, however, on a motion from Koretz. Kightlinger said that wasn't inconsistent with Met's work on the bill.

"That is staff's job, to work with elected officials," he said. "Final positions on final bills are the board's prerogative."

'This wasn't just the technical points'

A House Democrat who represents Northern California tribal Indian and farming constituencies, Rep. Jared Huffman, said he was surprised by Met's intimate involvement.

"It certainly confirms the type of input we know Sen. Feinstein and the Republicans were getting, but I am surprised to see the significant role that the Metropolitan Water District was playing behind the scenes," he said.

Huffman, a former senior attorney with the Natural Resources Defense Council, pointed out that Met's involvement with the Feinstein bill could have led to a conference committee with Valadao and the other House Republicans, whose February bill went much further.

[H.R. 3964](#) would have undone a San Joaquin River restoration program that has been the object of a court settlement and intricate compromises between state and federal officials for decades, capped the delivery of water for environmental purposes, lengthened irrigation contracts and lifted certain environmental protections in area watersheds, among other controversial provisions (*E&E Daily*, Feb. 6, 2014).

"This wasn't just the technical points they were submitting in isolation," Huffman said. "This was attached to a really big, nasty piece of legislation."

"Everybody knows this was part of negotiations between Senator Feinstein and Valadao and the Republicans," he continued. "Whatever they may have been suggesting for Senator Feinstein, they knew it was going to be attached to something very controversial and very destructive, or else it could never have passed muster with the Republicans."

Talks appear to have slowed down between Feinstein and the Northern California contingent. Huffman said he hasn't discussed the bill with Feinstein since a meeting in January with Northern California Democrats (*Greenwire*, Jan. 28).

Feinstein's spokesman said he didn't have a timeline for when a bill might be introduced.

"Over the past year the senator and her staff met, emailed and spoke with dozens of agencies and groups about drought legislation, and those consultations continue," spokesman Tom Mentzer said in an email. "That back-and-forth is how bills get drafted, especially controversial bills like this one. Feedback is sought, applied when appropriate, and a bill slowly comes together."

"I won't comment on specific conversations except to say they all share the same goal: developing an emergency bill (with a limited duration) that will help the whole state and improve conditions for fish and wildlife by prudently increasing water supplies -- all while not violating environmental laws such as the Endangered Species Act and the Clean Water Act," Mentzer added.

Met officials have found more success in dealing directly with the federal agencies. Late last year, they successfully challenged FWS's calculation of the number of smelt that can legally be killed each year -- another metric defined in the 2008 biological opinion. That led to FWS more than doubling the amount that can be killed this water year, from 78 to 196 (*Greenwire*, Jan. 29). Burman proposed the same adjustment to Petersen on June 12, 2014.

Birmingham and Kightlinger said they hadn't been in discussions over a drought bill this year. Kightlinger visited Washington, D.C., earlier this year and met with lawmakers including Feinstein, Huffman, House Majority Leader Kevin McCarthy (R-Calif.) and Reps. Ken Calvert (R-Calif.), Adam Schiff (D-Calif.) and Grace Napolitano (D-Calif.), but discussed only the political chances of a bill, rather than specifics.

"We, Met, would like to see a bipartisan bill that parties can agree to," he said. "Historically, water has not been a partisan issue, but like many things these days, it's getting more and more partisan."

Birmingham said the need for a legislative fix has only increased since last year's talks.

"I would observe that the drought has worsened and the need for some action is only exacerbated," he said. "It's my hope that some legislation providing congressional direction on how the existing biological opinions will be applied to the operations of the Central Valley Project and State Water Project during the ongoing crisis will be enacted."

Twitter: [@debra_kahn](#) | Email: dkahn@eenews.net

DELTA FARM PRESS

How might the California drought impact Southern agriculture?

Medium-grain rice may tempt Mid-South producers

Mar 27, 2015 [David Bennett](#) Delta Farm Press

The vice-like California drought – now in its fourth year -- is only tightening and state residents would surely be willing to trade some of that famous sunshine for a mass of rolling rainclouds.

Now, that drought is impacting agriculture outside the state's borders. Farmers in the western state are being offered burgeoning sums for their irrigation water and, if the deal is struck, that may mean a gap in the medium-grain rice market. Farmers in the South may be tempted to fill that hole in the market.

Stuart Hoetger, California-based [Firstgrain](#) economic consultant, says the drought in northern California "is bad, but it's worse in central California. Roughly 67 percent of the state is in extreme drought. The farther south you go, the worse the drought and the more pressure there is to take more water from the north."

In late March, Hoetger spoke with *Delta Farm Press* about the situation. Among his comments:

California farmers have been offered money for their water from municipalities before, right? But now it's reached the level where they're actually considering it?

"Most certainly. Water sales have been happening here for a long time. I grew up in southern California and so was the recipient of some of those sales. Now, I'm up here in the north watching my neighbors sell their water.

"One acre of rice provides enough water for six households in southern California for a year. So, there's always a battle from people farther south wanting water. Unfortunately, it's often used for watering lawns and filling pools rather than for producing food.

"When the water sales are at \$300 or \$400 per acre, most farmers aren't interested because it's more lucrative for them to go ahead and grow the crop. However, this year, they're being offered \$700 per acre foot. That equated to, roughly, \$25 per hundredweight -- \$18.50 to \$19.50 over loan. The current market for rice is about \$16 over loan. So, right now, farmers are basically guaranteed to sell their water for \$3 per hundredweight more.

"An acre foot of water equates to about 325,000 gallons. It takes about three acre feet of water to grow rice. So, the farmer could get about \$2,100 per acre for water he'd use to grow the crop. He'd get about \$1,870 per acre if he grew the rice, depending on where the crop is grown in California."

What are you hearing from the farmers about selling their water?

"The water sales won't really finalize until after April 1 when the California Department of Water Resources (DWR) goes up into the mountains and does a final survey. There are three ways to store water in the state: snow pack, reservoirs,

and groundwater. Snow pack is the largest way we store water in the state and, right now, it's only 12 percent of the average and not much in the forecast.

"So, what will happen on April 1 is the DWR will send up surveyors to check the snow pack levels. Once they find that the snow pack looks bad, they'll limit the amount of water sales that can occur. That's because water allocations will be lowered in general.

"To clarify: the DWR monitors water on a state level but there are also counties and districts that manage water on a more micro level."

What's the current estimate for rice acres in 2015 for California?

"Right now, our best estimate is between 342,000 acres and 352,000 for medium- and short-grain rice. That's a drop of about 12 to 17 percent."

The South

How might the South play into the medium-grain vacuum that would leave?

"At this point last year, California had sold 150,000 tons of rice to Turkey. Currently, the United States has sold 160,000 tons – but it's largely Jupiter (a Southern medium-grain). So, we've already lost over 150,000 tons of business to the South. And that's not including the fact that California is now competing with the South for Taiwanese business. We expect the only growing competition from the South to be for Taiwanese and Middle Eastern business.

"Also playing into this is Australia's medium-grain production dip. Their production fell by 24 percent last year and is expected to drop another 15 percent in 2015.

"All that means rice farmers in the South are having their heads turned by medium-grain possibilities. I was doing a presentation here yesterday and asked how many knew the price of Jupiter. Not a single person raised their hand. The flip side of that is we did a presentation not long ago in the South and asked how many of them knew the price of California rice. Nearly everyone raised their hand.

"So, for the first time in a long time, Californians need to learn what's happening in the South. The South is certainly always watching what's happening here. There will definitely be a price correlation because farmers in the South will plant rice without a contract this coming year. That creates a cash market.

"The South can only really compete with California in the Middle Eastern market – Jordan, Turkey, Libya – and Taiwan. While there seems to be a lot lining up right for medium-grain in the South, we're only cautiously optimistic in advising farmers there to plant medium-grain rice. That's largely because if they can't sell their medium-grain, it's sold as Number 3 at extremely low prices or not sold at all. It's definitely possible to see the South overproduce medium-grain rice this year because its demand is only limited to a few markets.

"Most of the Calrose business is done on a milled basis. Calrose is at \$905 per ton and Jupiter is about \$615 a ton in the South. On the farm, you're looking at \$22 per hundredweight in California compared to \$13.30 per hundredweight for Jupiter. A lot of that is due to quality – Calrose is the premier medium-grain especially with large-scale commercial production."

2015

General thoughts on the 2015 crop?

Milo Hamilton, president of Firstgrain: “On the long-grain side, we’re near major primary lows. It’s very difficult to see that because everyone is so bearish. The thing that’s made things so bearish isn’t the rice market but the dollar and crude oil. There’s incredible heavy pressure to sell these markets by outside speculators.

“That’s pushed the (long-grain) price \$1 to \$2 under value. Until that that selling releases itself, we’ll continue to see these kinds of prices.

“The hinge vote on this isn’t what happens in Asia but what will happen mostly in Arkansas and to a lesser extent, Missouri. We think acreage could be down in Mississippi and northeast Louisiana. It’ll be down in Texas for water reasons.

“The long-grain price is coming into a major low, no doubt. The ability to recover is based on acreage. We had a large increase in acreage and when that happens, the price goes down. At \$10 the price is about the same as Thai rice – at least on a milled basis. The last time that happened was in 2010. The two countries (Thailand and the United States) don’t stay together very long. We don’t see the U.S. market trading at that level for long because it’s below the cost of production. The farmers in rice are growing it because of the counter-cyclical payment that’s available. Without that payment, you’d hear a giant sucking on rice acreage in the South.

“If the rice acreage goes up 10 percent, we’ll stay in pea soup for a while. Outside the Arkansas area it appears rice acreage could be down as much as 8 percent. We’re doing a Firstgrain acres survey this week that will help clarify that.”

Hoetger: “We think Jupiter acreage will increase in Louisiana about 10 to 15 percent. It’ll be up 5 to 10 percent in Arkansas. That’s because Louisiana folks will plant earlier and Arkansas will respond to that.

“I’m a bit worried about the risk of overproduction. I hope farmers in the South keep that in mind. The medium-grain there is mostly contracted by domestic companies. The leftover is sold overseas and you can’t rely on those markets. Turkey can buy 150,000 tons of rice one year and 20,000 tons the next. It’s risky to plant medium-grain rice in the South without a contract.”

THE NEW YORK TIMES

Preparing for Tomorrow's Storms

By [THE EDITORIAL BOARD](#) MARCH 28, 2015

Californians are understandably focused on the state's severe drought, now [in its fourth year](#). But drought is not the only environmental risk the state's residents face.

Twenty-five million Californians get their drinking water from the San Francisco Bay Delta watershed, which covers more than 75,000 square miles and stretches from the Cascade Mountains in Northern California to the Tehachapis in the southern part of the state.

Rain and snowmelt in the watershed (down significantly this year because of the drought) eventually flow to the Pacific Ocean through San Francisco Bay. Along the way, that fresh water is protected from saltwater by a patchwork of levees. If those levees are breached in a storm or an earthquake, millions living in the area will be without safe drinking water.

Experts have been worried about a breach for decades, and sea level rise associated with climate change would only exacerbate the existing risks to California's water.

Gov. Jerry Brown has proposed a plan to build tunnels to carry water through the delta region, a system he says would better protect the water supply from contamination. A [drought relief bill](#) just passed by the California Legislature, and signed by Governor Brown on Friday, would also include \$660 million for flood control projects, including the repair of levees with known problems.

The \$14.5 billion tunnel plan has encountered significant criticism, both [from the Environmental Protection Agency](#) and from environmental groups in California, [which are concerned](#) that the project would greatly increase the amount of water drawn from the delta area because of the high capacity of the tunnels. This increase, they fear, would endanger fish and other wildlife.

Opponents of Governor Brown's plan say the state should invest in projects to increase water efficiency and decrease reliance on water from the delta. Some have proposed a smaller tunnel project. Meanwhile, state officials are revising the tunnel plan and intend to recirculate it for public comment this spring.

Even when revised, the plan will most likely face significant opposition. But at least California's leaders are thinking about these issues.

In the coming years, climate change is likely to render every part of the country more vulnerable to environmental disasters. In some states, planning for these disasters is hampered by politicians who deny the very existence of changes in the climate. In Florida, another state threatened by sea level rise and extreme storms, [officials say](#) they were told not even to use the term "climate change."

Even when there's recognition of a gigantic problem — as with California's aging levees — the cost of infrastructure improvements coupled with bureaucratic inertia means it's always simpler to put off measures that might avert future calamities. And so it's easier to take the gamble that the catastrophe won't happen, the storm won't roll in, the flood won't come, even though ever more scientific evidence says it will.

Where to store water? Above ground or below ground?

California Water Commission has \$2.7 billion to spend on reservoirs and groundwater storage

By Joe Byrne

Special to The Bee

03/28/2015 5:00 PM

03/29/2015 12:03 AM

JOIN THE CONVERSATION: There are major disagreements over how best to spend \$2.7 billion of the water bond on projects to store water either above ground in reservoirs or below ground in aquifers; what advice would you give as the California Water Commission evaluates a variety of projects? Submit a letter or comment on our Facebook page.

Last year, with support from more than two-thirds of the voters, Californians passed Proposition 1, the state water bond. This far-reaching measure allocated \$2.7 billion for water storage projects to improve California's water system and its natural environment to better prepare us for future devastating droughts, like the one we are experiencing now.

The California Water Commission has been entrusted with this investment to help meet the state's water needs in the future and takes this charge from voters with utmost seriousness. We have already launched a public engagement process to help the commission as it develops the grant program, called the Water Storage Investment Program.

A few facts up front:

- According to Proposition 1, the commission may only fund "public benefits" associated with water storage projects.
- These public benefits include improvements to the ecosystem, improved water quality, recreation opportunities, flood management and provisions for emergency response.
- A project must show measurable benefits to the Sacramento-San Joaquin Delta or its tributaries and must improve the operation of the state's water system.
- The state's cost share for a project can't exceed 50 percent of the total project cost, and half of the state's cost share must go toward ecosystem improvement public benefits.
- Projects can include water stored above ground or below ground, projects that use both types of storage together, or operate existing projects in a way that provides more benefits.
- The legislation also dictates the timeline that the commission must follow in this process. Importantly, the commission may not award any funds to projects before Dec. 15, 2016.

Difficult questions have been raised during our commission meetings regarding the criteria we are working under and the program we are developing. How do we determine if a project is eligible? How do we quantify and measure the public benefits of a surface storage or groundwater storage project? How do we prioritize environmental benefits?

The commission has been and will continue to work hard to answer these questions and many others as it creates the specific requirements and criteria of the water bond. While the requirements of the water bond are the foundation for our program, we will look to a diverse stakeholder advisory committee and the public for input throughout the process.

The commission will be making critical investments that will improve the health of our water management system and yield far-reaching public benefits for all Californians. The commission intends to work with applicants to make sure that they understand the process and evaluation criteria. Project applicants will be required to clearly identify how their projects would provide the public benefits. They will also be required to demonstrate that they have sufficient locally generated funds for the nonpublic benefits portion of projects.

Throughout this process, the commission is committed to ensuring public engagement and input. Here's how:

1. We're gathering information about potential projects that meet the bond criteria.

Although many water storage projects are known to the state, public agencies have long compiled information to support water storage projects if funds became available. To learn about these projects, we issued an informal scoping survey in February to organizations across the state.

The survey was intended as an educational process on both sides. The commission wanted to learn about potential projects, and we wanted applicants to learn about the legislative guidelines. The survey was not intended to provide a complete list of projects. It was also not intended to determine project eligibility.

Survey results indicated a significant need for more education about the program, specifically about the legislative requirements for eligible projects.

We received information on 147 projects, yet only 64 respondents indicated their project produces ecosystem benefits, a required element for funding in the bond language. And only 34 respondents indicated their project produces benefits to the Sacramento-San Joaquin Delta, which is also required.

Most of the submitted projects cited are not ready for construction today. Only 18 respondents have completed environmental reviews. Most respondents said they are two to four years away from being ready to receive funding. While some have criticized the bond by restricting the commission to award money before Dec. 15, 2016, based on the survey, it appears that the funding timeline will not delay any projects.

2. We have established a robust stakeholder engagement program.

The commission has convened the stakeholder advisory committee with representatives from 29 organizations representing a wide array of interests. The committee will meet for the first time on April 1, and then every month through October, if necessary. All of its meetings will be open to the public. This committee will spend considerable time discussing criteria and guidelines of the program, and will inform the commission as it makes its decisions.

3. We have established a statewide public information process.

The Water Storage Investment Program can be confusing and difficult to understand. Many technical requirements and layers of legislative rules must be followed. To help applicants and other interested parties understand the process, the commission will host a series of public meetings across the state in the next six months. The first public meeting will be held in Chico on April 13. Five more will follow in Northern, Central and Southern California.

4. The California Water Commission is going on the road.

The commission will be conducting its meetings in various locations, including San Jose, Fresno and Los Angeles in the coming months. These public meetings will provide opportunities for the public to learn and provide input throughout our process. See the commission's website at cwc.ca.gov for more information about our meetings.

While the \$2.7 billion will not solve California's water problems, it is a substantial investment and important step that is consistent with the governor's Water Action Plan, which aims to move California toward long-term sustainability by creating a more reliable water supply, restoring ecosystems and helping the state's water system become more resilient. The California Water Commission is committed to conducting an open and transparent process, and we hope that the public, including potential applicants, will be involved in this very important endeavor.

[Joe Byrne](#), a Los Angeles attorney with Best, Best & Krieger, is chairman of the California Water Commission.

THE MODESTO BEE

Irrigation districts: State could derail delicate Stanislaus water deal

By Steve Knell and Jeff Shields

03/28/2015 5:01 PM

03/29/2015 12:01 AM

There is no way to get around the human, environmental and financial consequences of a fourth consecutive drought year in water-starved California. We have seen it in the fallowed fields on the west side of the Southern San Joaquin Valley and the economic devastation in that region. We have seen it in the reduced flows in rivers and historically low levels of many of the state's reservoirs.

On the Stanislaus River, responsible water management and sensible conservation by our customers has enabled us to avoid the worst of those outcomes the past three years. But New Melones Reservoir – the largest dam on the river – has receded to levels not seen since 1991. The Central Sierra snowpack is a paltry 12 percent of average, and current watershed precipitation is 1½ inches less than that received in the historically dry winter of 1976 for this same period.

February and March this year will likely be the driest months on record and seasonal runoff is predicted to be 20 percent or less of normal. It's terrible, and there is no relief in sight.

All of which underscores the importance of a tentative agreement recently reached between the Oakdale and South San Joaquin irrigation districts and federal officials regarding management of New Melones for the remainder of this year.

We believe this consensus plan balances the needs of fish and farmers, domestic users, recreation, power generation and carryover storage. It is the result of weeks of serious discussion and compromise between our irrigation districts; the federal Bureau of Reclamation, which manages New Melones; and the National Marine Fisheries Service, which has regulatory responsibility for steelhead trout and salmon in the Stanislaus River.

The basics of the plan are this:

- Federal officials will be able to meet all their springtime "pulse flows." During pulse flows, more water is released into the river to help young fish swim toward the Delta and beyond. The first pulse flow was March 24-26 for steelhead; the second will be from mid-April to mid-May for salmon.
- Officials will be able to meet base-flow needs for the fish in the river through December.
- The irrigation districts will equally divide 450,000 acre-feet of water this year. That's 150,000 acre-feet less than normal. SSJID already has capped deliveries for its farmers and OID will consider it at the April 7 board meeting.

- By Sept. 30, at the end of the irrigation season, New Melones is expected to hold just 115,000 acre-feet of water; its capacity is 2.4 million acre-feet. The reservoir's "dead pool" – the level of water below the lowest spill gate – is 80,000 acre-feet. The 35,000 acre-foot difference will be used to meet flows for spawning salmon through Dec. 31.

The irrigation districts are considering additional conservation measures this season to ensure the end point of 115,000 acre-feet in New Melones is met or exceeded.

Lake Tulloch, which has many homes surrounding it, is downstream of New Melones. It is jointly owned and operated by OID and SSJID. The intent is to keep Tulloch at normal operational levels through September.

The plan is supported by the region's two congressional representatives, Jeff Denham and Tom McClintock, as well as state legislators Kristin Olsen, Adam Gray, Tom Berryhill and Frank Bigelow.

As part of the agreement, the Bureau of Reclamation filed a Temporary Urgency Change Petition with the State Water Resources Control Board. The water board must approve the petition for the New Melones plan to be fully implemented. If it imposes additional terms and conditions, the delicate balance reached by the water districts and federal regulators may be lost.

The Stanislaus River is the lifeblood for an agricultural industry worth \$6 billion in our two counties, fish listed on the Endangered Species Act, and people who enjoy its natural beauty. This plan represents the most responsible way to protect all those things. We encourage everyone with an interest in the river to show their support by contacting the water board at info@waterboards.ca.gov.

Knell is general manager of Oakdale Irrigation District; Shields is general manager of South San Joaquin Irrigation District.

LOS ANGELES DAILY NEWS

California's leaders need to step up to fight drought

By [The Los Angeles News Group Editorial Board](#), LA Daily News

Posted: 03/27/15, 5:01 PM PDT |

It has nothing to do with strictly party-line politics, but drought-relief advocates to the left and the right of Gov. Jerry Brown are urging more and better spending on water in California, and both sides are correct.

Sometimes the famously middle ground trod by our governor is just the place to be. But Brown is the one who five dry seasons ago, in January 2014, declared the state to be in drought emergency, urging a 20 percent cutback on use across the board. And California from Yreka to San Ysidro has only become a drier place since then. It's not just the paltry amount of rain that has fallen. The Sierra Nevada snowpack, the hallowed place where most of our water is in effect traditionally stored before melting in the very late spring and even through the summer, for the fourth year in a row is a mere dusting of its usual blizzard.

Remember when it was quite common for Mammoth Mountain not to close its ski slopes until the Fourth of July? Well, they're holding out for a technical Memorial Day close this year, but only for those who enjoy a rocky ride. Winter is only a week behind us, but the base depth is just 14 inches at the resort's main lodge at 8,900 feet. The 50-degree daytime temperatures mean what little snow there is will be melting fast.

So last week the Legislature passed a drought-relief package amounting to about \$1 billion in various measures, including literally bringing bottled water to Central Valley residents. There's nothing particularly wrong with the measures being implemented. But as we reported before the legislative vote, [nearly two-thirds of the funds in the package would go to improve flood control structures by using leftover money from a 2006 voter-approved bond measure. Another \\$272 million from a water measure approved last year would fund grants for water recycling and expanding drinking water in small and poor cities.](#)

Nothing wrong with old, long-approved money, in this sense. But California's Assembly Republican leader is not ordinarily one to throw cash around, and yet even Kristen Olsen, R-Modesto, says state funding [is not flowing fast enough](#). "We have to do it now," Olsen told the Los Angeles Times. "Californians are relying on us."

That's right. Whether or not our trust is misplaced, we are still relying on our state's leaders — the governor, the members of the Legislature, their professional staffs and agency heads — to get innovative on the water supply and storage side and to find new ways of getting residents, business and especially agriculture to conserve.

That 20 percent that Brown asked Californians to cut back by when he declared a drought emergency? The 8 percent less we are actually using, on average, is a pretty poor showing. Even fast-growing Central Texas, in the area surrounding Austin, which is also in drought, [has managed to cut back overall water use by 20 percent](#) at a time when it is adding tens of thousands of new residents a year. Why can't we do better than we are? Since the drought is clearly ongoing and serious as a heart attack, we want to see more innovation and leadership from the Capitol down to our city halls.

Spread the conservation incentives such as turf-replacement rebates statewide. Invest in water storage. Start enforcing the local laws so many ignore. Use the bond monies that California has already improved to begin long-term green engineering programs that save stormwater runoff for our people and our greenbelts. Stop talking about purple-pipe water-recycling programs to irrigate golf courses and roadway medians and implement them using bond money already identified.

Emergencies call for triage, Sacramento!

THE MALIBU TIMES

Water, Water Everywhere ... or Nowhere

Posted: Friday, March 27, 2015 10:00 am

By Pam Linn / The Malibu Times | [1 comment](#)

Five years ago, my column "Is water the new oil?" appeared in these pages, explaining a few things about how different states deal with water rights. And that was before California's current four-year drought.

My memories of persistent dry spells in Southern California precede that by decades. As early as the 1970s, wells were producing water that was essentially rocks, followed by El Niño years of uncontrolled flooding. It was hard to know what to plan for.

I remember a gas company billboard showing an open-mouthed guy taking a shower; below were the words, "Sing shorter songs." Terrific! Whether that ad was about conserving gas or water, the results were impressive.

But California is a big state and its north and south are subject to very different climates. SoCal is basically a desert, while rainfall totals north of the Central Valley resemble those of Oregon and Washington.

This time, with record high temperatures and record low rainfall, we need all the help we can get from both citizens and government. Gov. Jerry Brown and legislators have proposed laws mandating water conservation and spending money left over from a 2006 voter-approved bond measure. Also, a \$7.5 billion bond approved in November would be used to accelerate building of flood control projects.

Lawmakers explained that sudden floods occur even in dry years and such projects would also protect drinking water for the heavily populated southland. It's ironic that decades ago, former California Gov. Pat Brown, the current governor's father, left as his legacy the state water project, which shifted water from the well-soaked north to the parched south and central valleys.

Unlike Florida, where legislators have been advised by their governor not to utter the words "climate change" or "global warming," California lawmakers openly blame the intensity of the drought and intermittent flooding on a climate that is changing more quickly and more drastically than some are willing to admit.

Last week, broiling heat broke records that have stood for more than 60 years all across the southland with temperatures 20 degrees above normal, sparking fires on the hillsides.

Combined with the brutally cold winters suffered on the East Coast, one would think climate change might be involved. Boston broke all-time snowfall records with over nine feet and the Dallas/Fort Worth area of Texas has suffered traffic jams from rarely seen black ice.

In the 1970s, I moved to a house near Calabasas that essentially had been vacant for the better part of a year. It was located on one landscaped acre with way too much lawn. Our city water supplier thought to promote water conservation to combat drought with a surcharge based on previous usage.

I spent many hours at the water company office arguing that the house had been unused and that I had 10 horses drinking on average 15-plus gallons of water per day each. Never mind the lawns, which I deeply watered once a week, in the evening, with soakers, not sprinklers. Ultimately, I won that fight.

Where I now live in Bozeman, Mont., our state legislators are trying to pass a law (SB 262) protecting a water agreement called the Confederated Salish Kootenai Tribal (CSKT) Compact. In the compact, the tribes reached an agreement with the State and Federal governments to accept less water than they believe is their right. If the bill doesn't pass, the CSKT water rights may be litigated in court, and, if that happens, Montana water rights may remain unresolved for decades. Our state legislature meets for only a few months every two years, but is often bitterly divided along party lines. We can only hope they follow California's lead and come to agreement on this bill.

Meanwhile, I'm taking every opportunity to advise my friends and relatives to learn how to conserve water. Montana is a state where clean, fast-flowing rivers are treasured and fed by annual snow pack. Although this has been an unusually mild winter, snow has persisted in the surrounding mountains where ski areas plan to remain open until Easter.

Regardless of wild fluctuations in weather around the country, we should acknowledge that all the water on this planet is already here and must be conserved and protected. If that means restaurant water must be requested and lawn sprinklers eschewed, then so be it.

BLOGS

SF CHRON BLOG – SMELL THE TRUTH

Is pot causing the California drought?

Posted on March 30, 2015 at 10:28 am by [David Downs](#) in [Activism](#), [Growing Marijuana](#), [Science](#)

No, pot is not causing the California drought. You'd have to be a buffoon to think that was the case. And the international media is full of buffoons.

Over the last week at least four publications have seized on a narrow study of marijuana agriculture in one, heavily affected watershed to write the following headlines: [California Drought Caused By Marijuana Cultivation?](#); [California is in one of its worst-ever droughts because people are growing too much weed](#); [Smoked dry: Massive marijuana cultivation has 'lethal' impact on California water supply – study](#)

Yet the [actual study](#) takes pains to point out that is exactly the opposite of the case. Industrial-scale agriculture takes the vast, vast majority of California's water supply, and that water supply is decreasing because of climate change.

"In California, irrigated agriculture is the single largest consumer of water, taking 70–80% of stored surface water and pumping great volumes of groundwater [44]. ... Due to climate change, water scarcity and habitat degradation in northern California is likely to worsen in the future. Regional climate change projections anticipate warmer average air temperatures, increases in prolonged heat waves, decreases in snow pack, earlier snow melt, a greater percentage of precipitation falling as rain rather than snow, a shift in spring and summer runoff to the winter months, and greater hydroclimatic variability and extremes [69–77]. ... Climate change is expected to result in higher air and surface water temperatures in California's streams and rivers in the coming decades, which in turn could significantly decrease suitable habitat for freshwater fishes [80–83]. Due to a warming climate, by 2090, 25 to 41% of currently suitable California streams may be too warm to support trout."

Pot agriculture represents a tiny sliver of water use in the state. The problem is decades of pot prohibition pushed that water use into parched, remote hills and mountains of Northern California. Cannabis agriculture is definitely exacerbating drought conditions in "Upper Redwood Creek, Salmon Creek, and Redwood Creek South, located in Humboldt County; and Outlet Creek, located in Mendocino County" the study confirms.

But you'd have to be high on something — or an editor of The Independent UK — to extrapolate those narrow findings to the rest of California.

SCIENTIFIC AMERICAN

Keeping Tiny Delta Smelt Alive in Captivity Is No Small Feat

[Extinction Countdown](#) News and research about endangered species from around the world

By [John R. Platt](#) | March 27, 2015 |  [2](#)

The views expressed are those of the author and are not necessarily those of Scientific American.

Although a recent survey turned up only six delta smelt in the Sacramento-San Joaquin estuary, they are not alone. Another 20,000 of the tiny fish currently live in captivity at the Fish Conservation and Culture Laboratory at the University of California, Davis.

This massive assurance breeding population—the only one that exists—got its start several years ago when the laboratory received about 160 wild fish, says Dr. Joan Lindberg, the lab’s director emeritus. The fish have been bred there ever since and the lab provides a few smelt every year to the Livingston Stone National Fish Hatchery, which maintains a secondary safeguard population.

It’s a lot of work to keep the captive smelt alive within the two-acre UC-Davis facility. “The smelt require an intensive style of aquaculture,” Lindberg says. The water is constantly recirculated, the temperature is controlled (the fish get stressed above 71 degrees) and biofiltration processes clear the water of pollutants. Small crustaceans and insect larvae are constantly added to the water as prey.

The smelt also live in different parts of the facility depending on where they are in their life cycle. “The fish move from smaller to larger systems as they grow,” Lindberg says. “We can keep adults in a system of 5-foot-diameter tanks.” (You can see photos of the tanks on the lab’s [Facebook page](#).)

The fish aren’t all kept together. Instead, the lab divides the population into about 260 “sibling families” every year. Each fish is tracked and recorded and only allowed to breed with matches pre-selected by the [UC Davis Veterinary Genetics Laboratory](#). “By making very selective crosses and knowing the pedigree and the parents of each individual, we can minimize inbreeding,” Lindberg said.

In addition to the labor-intensive processes, keeping the fish alive in captivity is also expensive. The lab just received a nearly \$10 million from the U.S. Bureau of Reclamation, which will fund the work for the next four years.

Will any of these fish ever make it back to their home in the Sacramento-San Joaquin estuary? Lindberg says “putting animals back in this system would be problematic. We would hope to see some improvements to the habitat before we do that.”

That’s unlikely to happen any time soon, though. For now, a combination of vats, tanks and hard work is the only thing keeping the delta smelt from extinction.

CIRCLE OF BLUE

California Drought Is Not Lifting

Monday, 30 March 2015 05:30

By Brett Walton
Circle of Blue

Pressured by a [relentless drought](#) that produced the lowest winter snowfall in history and shows no signs of lifting, California’s local and state government administrators are responding with emergency measures that reflect their concern that the state is actually running out of water.

“It’s hard to overstate the severity of this drought,” said Max Gomberg of the State Water Resources Control Board. “Reservoirs are depleted. Communities are out of water. Farmers are out of work. It is a dismal situation.”

“We’re at a point where we can’t count on it raining,” he added.

“We’re at a point where we can’t count on it raining.”

—Max Gomberg

State Water Resources Control Board

The most visible evidence of California’s fourth straight year of below average moisture levels begins in the mountains. Official Sierra Nevada snowpack measurements will be taken April 1. But a network of daily sensors already tells a bleak tale. Snow levels on March 26 were the lowest on record, just [8 percent of normal](#). If an average winter would bury a grown man head-to-toe in snow, this year he would not even get his calves wet.

Anticipating the consequences to farms, businesses and communities, the California Department of Water Resources announced earlier this month that farmers and urban water districts with contracts for state-supplied water would receive one-fifth of their full allotment. The Bureau of Reclamation, a federal agency, gave cities one-quarter of their full supply while farmers south of the Sacramento-San Joaquin Delta, the state’s hydrological switchyard and an imperiled ecosystem, learned that they would receive [no federal water for a second consecutive year](#), the first time that has ever occurred.

Intensifying with each sunny week, the dry winter prompted local officials to make emergency investments and restrict water use.

- Santa Barbara, a wealthy coastal city, anticipates that it will need to spend \$US 40 million plus \$US 5 million in annual operating costs to [restart its desalination plant](#), idle since the drought of 1991.
- The Metropolitan Water District of Southern California, a wholesaler that supplies half the state’s 38 million people, will cut deliveries to its member agencies by 10 percent.
- Lake Don Pedro, a community of 3,200 in the Sierra Nevada foothills, is [slashing water use by half](#) to avoid having its reservoir run dry.
- At least two counties — San Luis Obispo, on the central coast, and Merced, in the San Joaquin Valley — approved [new ordinances](#) that require stricter review of landowner proposals to sell groundwater to buyers outside the county boundaries.

“We’re clearly in a serious drought with no real end in sight,” said Heather Cooley, water program director at the Pacific Institute, a think tank based in Oakland, California. “We need to be thinking that this is the fourth year of potentially a 10-year drought. We need to be thinking long term.”

In an era of fiscal austerity, when most state governments are reluctant to increase spending on public infrastructure, California is investing big money in water supply. Last week, the California Legislature passed a \$US 1 billion water bill, which accelerates spending that was already approved by various bonds and budgets. Some \$US 137 million supports water recycling and desalination, while \$US 136 million helps poor communities gain reliable drinking water service. Food banks serving counties hit hardest by the drought will receive \$US 24 million, and more than \$US 6 million will help the water board enforce watering restrictions.

A Struggle over the Delta

The heart of California’s water battle is the Sacramento-San Joaquin Delta, where the state’s two great rivers meet some 50 miles south of Sacramento. The delta has been a festering problem for more than three decades, but the drought has ripped the gash wider as the ecosystem and rural economies teeter for lack of water.

The delta, an estuary that is influenced by Pacific tides, is both a watershed that supports local farms and fisheries and the busiest interchange along California’s intrastate water transport system. Water that is held in northern California reservoirs for delivery to water users in the state’s southern half must pass through the delta before being pumped into

state and federal canals. Diverting more water out of the delta kills federally protected fish species and increases salt levels, which harms towns and farms that draw water directly from the delta's maze of sloughs, marshes, and canals.

California's [hydraulic machinery](#) pits these local interests against distant benefactors. Water districts south of the delta desire more water to serve a host of powerful clients: the lucrative agriculture industry in the San Joaquin Valley which holds six of the nation's top seven farm counties, the oil industry in Kern County, and big urban districts in Southern California, home to most of the state's people.

The highly technical debates among state and federal agencies this winter regarding the delta — debates that involve salinity standards, fish counts, and flow requirements — underscore the desperation for water when there is little water to be had.

The water delivery restrictions imposed this year by the California Department of Water Resources (DWR) and the Bureau of Reclamation serve several purposes, which were described in a [drought response plan](#) published in December. The restrictions are intended to provide minimum amounts of cold water to salmon that spawn in late summer and enough water to sustain an endangered fish species called the Delta smelt while keeping saltwater from penetrating inland. Delta smelt populations are at all-time lows, according to DWR fish surveys.

But both DWR and Reclamation have lobbied the state water board to loosen the delta's water quality standards so that more of the watershed's natural flow can be diverted southward during rainstorms. Those extra flows, according to the drought plan, are to be used for drinking water, sanitation, and other human health needs.

The water board granted a partial approval of the request in February, allowing increased water exports under a low- and a high-flow scenario during February and March. Without water from the north, these southern farm districts have pumped record quantities of groundwater, causing [thousands of residential wells to go dry](#) in the San Joaquin Valley.

Not satisfied with the partial approval, the two agencies petitioned the board to permit an intermediate export scenario, which the board granted this month on a case-by-case basis. The board is now reviewing [a request](#) by the agencies to extend the less-strict water quality standards through September.

CENTRAL VALLEY INDYMEDIA

Westlands Water District hires Rep. Nunes' chief of staff

by Dan Bacher

Friday Mar 27th, 2015 8:36 PM

"The District is excited about Johnny joining the District's staff," said Thomas Birmingham, Westlands' General Manager. "His prior work with elected officials at all levels of government in the San Joaquin Valley and other regions of the state will be instrumental in helping to forge a unified Valley position on potential solutions to address the Valley's chronic water supply shortages."

Map of Westlands Water District courtesy of <http://wwd.ca.gov/>



district-map-2014-11-10a....

Westlands Water District hires Rep. Nunes' chief of staff

by Dan Bacher

In yet another example of the revolving door between government, corporations and water contractors that defines California politics, the powerful Westlands Water District announced on March 27 that Johnny Amaral will join Westlands' staff as Deputy General Manager for External Affairs, effective May 1, 2015.

Mr. Amaral is currently the Chief of Staff for Representative Devin Nunes, who represents California's 22nd Congressional District and is best known for sponsoring legislation to increase pumping Delta water to corporate agribusiness and to eviscerate Endangered Species Act protections for Central Valley salmon, Delta smelt and other species.

"His service as a congressional chief of staff provides him with a wealth of experience in the fields of government, public affairs, and communications," according to a statement from Westlands.

"The District is excited about Johnny joining the District's staff," said Thomas Birmingham, Westlands' General Manager. "His prior work with elected officials at all levels of government in the San Joaquin Valley and other regions of the state will be instrumental in helping to forge a unified Valley position on potential solutions to address the Valley's chronic water supply shortages."

Mr. Amaral holds a Bachelor of Arts degree in Liberal Studies from California State University, Fresno, that he received in 1997.

Westlands will pay Amaral \$250,000 a year - a 50 percent increase from his current salary in the House of

Representatives.

Amaral's hiring serves to illustrate the increasing collaboration between government, water contractors and corporations in the state of California under Governor Jerry Brown. Just a few of the many examples of the revolving door between corporations and state government in recent years include:

- The Department of Water Resources' hiring of Susan Ramos "on loan" from the Westlands Water District, considered by many to be the "Darth Vader" of California water politics, to serve as "a liaison between all relevant parties" surrounding the Delta Habitat Conservation and Conveyance Program (DHCCP) and provide "technical and strategic assistance" to DWR (<http://www.indybay.org/newsitems/2011/12/14/18702762.php>)

Documents obtained by this reporter under the California Public Records Act revealed that Ramos, Deputy General Manager of the Westlands Water District, was hired in an "inter-jurisdictional personal exchange agreement" between the Department of Water Resources and Westlands Water District from November 15, 2009 through December 31, 2010. The contract was extended to run through December 31, 2011 and again to continue through December 31, 2012.

- The resignation of State Senator Michael J. Rubio in February, 2013 to go work in a "government affairs" position for Chevron. Rubio, who was leading the charge to weaken the landmark California Environmental Quality Act (CEQA) and make it more friendly to corporations, claimed he resigned in order to spend more time with his family. (<http://www.dailykos.com/story/2013/02/23/1189354/-Senator-Michael-Rubio-resigns-to-take-job-with-Chevron>)

- The hijacking of "marine protection" in California by Catherine Reheis-Boyd, President of the Western States Petroleum Association (WSPA). Reheis-Boyd chaired the Marine Life Protection Act (MLPA) Initiative Blue Ribbon Task Force to create so-called "marine protected areas" in Southern California. She also served on the task forces for the Central Coast, North Central Coast and North Coast from 2004 to 2012. (<http://yubanet.com/california/Dan-Bacher-Top-Censored-Environmental-Story-of-2012-Marine-guardian-lobbies-for-offshore-oil-drilling-fracking.php>)

- Governor Jerry Brown's appointment of Laura King Moon of Woodland, a lobbyist for the state's water exporters, as chief deputy director of the California Department of Water Resources (DWR) in September 2013. Prior to that appointment, Moon was a project manager for the Bay Delta Conservation Plan since 2011 while "on loan" from the State Water Contractors, a "non-profit association" of 27 public water agencies from Northern, Central and Southern California that purchase water under contract from the State Water Project.

"This appointment is just more of the fox guarding the hen house," said Tom Stokely, Water Policy Analyst for the California Water Impact Network (C-WIN), at the time of her appointment. "We know whose interests she will represent - and it's not the taxpayers of California."

Stokely's words are equally appropriate in describing Johnny Amaral, Susan Amaral, Michael Rubio, Catherine Reheis-Boyd and others who use their past or present government positions and contacts to advocate for corporate interests and the plundering of the public trust.

From: Tom Birmingham

Sent: Tuesday, March 31, 2015 11:03 AM

To: 'Watts, John (Feinstein)'

CC: 'Bernhardt, David L.'

Subject: Requested Provisions

Attachments: Temporaryflexoption1tbrequest.docx;

OPTION2TEMPFLEXMODIFIEDTOINCLUDECALISTEDSPECIES.docx; Management of Reverse Flow Section.docx; Calender Based Triggers.docx

John,

Per our conversation, attached are documents on the topics we discussed. With respect to the winter storms pumping provision, there are two options, which were drafted by David Bernhardt. David highlighted the text showing the proposed modification for both versions, but the change is identical in both verions. Please let me know if you have any questions.

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DURING PERIODS OF HIGH OUTFLOW.**

(a) In General- Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other environmental protections under subsection (d), the Secretaries shall use the emergency consultation provisions of the Endangered Species Act and its implementing regulations to implement temporary changes in the operating criteria for the biological opinions during days of high outflow as defined in subsection (b) that would improve water supplies for the Central Valley Project and the State Water Project.

(b) Days of high outflow. - Subsection (a) shall be authorized on any day or days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(c) Compliance With ESA Authorizations- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.

(d) Other Environmental Protections-

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources

Control Board Decision 1641, as it may be implemented in any given year.

(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to avoid impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding changes to operations, if any beyond the range of those authorized under the Endangered Species Act of 1973, regarding the potential impacts to species listed under

the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(f) Emergency Consultation-

(1) The Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions,

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) At the conclusion of informal consultation, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(g) Level of Detail Required for Analysis- In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

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(b) High outflow days - The temporary operational flexibility described in subsection (a) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.

(c) Compliance With ESA Authorizations- In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973.

(d) Other Environmental Protections-

- (1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law, including State Water Resources Control Board Decision 1641, as it may be implemented in any given year.
- (2) During the first flush of sediment out of the Delta in each water year, OMR flow may be managed at rates less negative than -5000 cubic feet per second for a minimum duration to

avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants, provided that the Secretaries explain the data examined and the connection between those data and the choice they made.

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period.

(4) During operations under this section, the Secretary of the Interior, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973.

(5) During operations under this section, the Secretaries shall confer with the Director of the California Department of Fish and Wildlife regarding changes to operations, if any beyond the range of those authorized under the Endangered Species Act of 1973, regarding the potential impacts to species listed under the California Endangered Species Act that are not listed under the Endangered Species Act 1973.

(e) Technical Adjustments to Target Period- If, during a high outflow day as defined in subsection (b) based on their review of environmental criteria in subsections (a), (c) and (d), the Secretaries authorize the Central Valley Project and the State Water Project to operate at levels that combined result in Old and Middle River flows

- (1) no more negative than -5000 cubic feet per second, that day shall not count toward the 28 cumulative days specified in subsection (a);
- (2) between -5001 cubic feet per second and -6249 cubic feet per second, that day shall count as ½ day toward the 28 cumulative days specified in subsection (a); and
- (3) between -6250 cubic feet per second and -7500 cubic feet per second, that day shall count as 1 day toward the 28 cumulative days specified in subsection (a).

(f) Emergency Consultation; Effect on Running Averages-

(1) If necessary to implement the provisions of this section, the Secretary of the Interior shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05, title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions, solely for the 28 cumulative days of temporary operational flexibility--

(A) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c) and (d); and

(B) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions.

(2) At the conclusion of the 28 cumulative days of temporary operational flexibility, the Secretary of the Interior shall not reinitiate consultation on these adjusted operations if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act.

(g) Level of Detail Required for Analysis- In articulating the determinations required under this section and section 102, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame

permitted for timely decision-making in response to changing conditions in the Delta.

SEC. ___. MANAGEMENT OF REVERSE FLOW UNDER THE BIOLOGICAL OPINIONS

(a) In implementing the provisions of the smelt biological opinion biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 unless a less negative reverse flow rate is reasonably required to avoid adverse impacts beyond those considered under the smelt biological opinion.

(b) Any decision to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the highest negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be explained in writing, including an explanation of the data examined and the connection between those data and the choice made, and promptly posted on the Fish and Wildlife Service website.

SEC. ____ . CALENDAR BASED TRIGGERS

Notwithstanding any calendar based trigger described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be limited by the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid the impacts identified by the salmonid biological opinion.

From: Tom Birmingham
Sent: Tuesday, March 31, 2015 11:14 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Re-consultation

John,

The following is excerpted from the Section 7 Consultation Handbook:

Section 7 regulations outline four general conditions for reinitiating formal consultation: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the action is modified in a manner causing effects to listed species or critical habitat not previously considered; (4) a new species is listed or critical habitat designated that may be affected by the action.

I do not believe the draft legislation would result in any of these conditions.

Tom

From: Tom Birmingham
Sent: Tuesday, March 31, 2015 12:19 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: FW: Requested Provisions
Attachments: Temporaryflexoption1tbrequest.docx;
OPTION2TEMPFLEXMODIFIEDTOINCLUDECALISTEDSPECIES.docx; Management of Reverse Flow
Section.docx

[Attached is the revised language.](#)

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, March 31, 2015 11:03 AM
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Cc: 'Bernhardt, David L.'
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From: Rachel Johnson - NOAA Affiliate

Sent: Wednesday, April 1, 2015 9:42 AM

To: John Cain

CC: Alison Weber-Stover; Andrea Fuller; Art Baggett; Brian Ellrott; Bruce DiGennaro; David Swank; Deborah Wordham; Eric Ginney; Erin Strange; Gary Bobker; J. D. Wikert; Jeanette K. Howard; Shelton, John@Wildlife; John Wooster; Jon Rosenfield, Ph.D.; Joshua Grover; Joshua Israel; Julie Zimmerman; Maurice Hall; Michael Martin; Monica Gutierrez; Nicholas Niir; Patrick Koepele; rachel.johnson@fishsciences.net; Ramon Martin; Rene Henery; Rhonda Reed; Richard Roos-Collins; Ronald M. Yoshiyama; Sara Larsen; Sean Maguire; Sierra Franks; Stephen Louie; Steve Edmondson; Valerie Kincaid; sgreene@westlandswater.org; Daniel.Worth@waterboards.ca.gov; Chris.Carr@waterboards.ca.gov; Cabrera-Stagno.Valentina@epa.gov; Diane.Riddle@waterboards.ca.gov; Paul_Cadrett@fws.gov; Maya Key; Heyne, Tim@Wildlife; sfong@sfcwa.org; John Ferguson; [REDACTED]@ [REDACTED] eappy@anchorqa.com

Subject: Good article on monitoring watershed restoration success

Attachments: Floodplain Restoration 2015.pdf

Thought y'all might enjoy the read.

Rachel

Rachel C. Johnson, PhD
Fisheries Ecology Division
Southwest Fisheries Science Center
National Marine Fisheries Service
Joint Faculty Affiliations
University of California, Santa Cruz and Davis
Tel: 831-239-8782

Watershed-scale effectiveness of floodplain habitat restoration for juvenile coho salmon in the Chilliwack River, British Columbia

Lindsey Ogston, Sam Gidora, Matthew Foy, and Jordan Rosenfeld

Abstract: Although billions of dollars have been spent restoring degraded watersheds worldwide, watershed-scale studies evaluating their effectiveness are rare. To mitigate damage from past logging activities, the floodplain of the upper Chilliwack River watershed (~600 km²) was extensively restored from 1996 to 2000 through off-channel habitat restoration. The contribution of restored habitat to watershed-scale production of wild coho (*Oncorhynchus kisutch*) smolts was estimated through an extensive mark-recapture program in 2002. 27%–34% of the production of the estimated 247 200 out-migrating coho smolts could be attributed to the 157 000 m² of newly created habitat. Area-based habitat models from the literature performed reasonably well in predicting smolt production from restored habitat, providing an acceptable first-order approach for evaluating production benefits of restoration. The costs of smolt production integrated over 30 years ranged from US\$0.69–US\$10.05 per smolt, falling within the range of hatchery production costs reported elsewhere (typical cost of ~US\$1.00 per smolt) at the most cost-effective restoration sites. This study demonstrates that large-scale habitat restoration can effectively enhance fish production at a watershed scale, at a cost that may be comparable to hatchery smolt production.

Résumé : Bien que des milliards de dollars aient été dépensés à restaurer des bassins versants dégradés dans le monde entier, les études à l'échelle du bassin versant qui s'intéressent à l'efficacité de ces actions sont rares. Afin d'atténuer les dommages causés par les activités de coupe de bois passées, la plaine inondable du bassin versant du cours supérieur de la rivière Chilliwack (~600 km²) a fait l'objet d'une vaste restauration de 1996 à 2000 reposant sur la restauration d'habitats à l'extérieur du chenal. La contribution des habitats restaurés à la production de saumoneaux sauvages de saumons cohos (*Oncorhynchus kisutch*) à l'échelle du bassin versant a été estimée dans le cadre d'un vaste programme de marquage-recapture en 2002. De 27 % à 34 % de la production d'un total estimé de 247 200 saumoneaux cohos ayant migré vers la mer peut être attribuée aux 157 000 m² de nouveaux habitats créés. Les modèles d'habitat reposant sur la superficie recensés dans la littérature prédisent raisonnablement bien la production de saumoneaux d'habitats restaurés, fournissant une approche de premier ordre acceptable pour évaluer les avantages de la restauration en ce qui concerne la production. Les coûts de la production de saumoneaux intégrés sur 30 ans allaient de 0,69 \$US à 10,05 \$US par saumoneau, soit dans la fourchette des coûts de production en écloserie rapportés dans d'autres ouvrages (coût typique de 1,00 \$US par saumoneau) pour les sites restaurés les plus efficaces en terme de coûts. L'étude démontre que la restauration d'habitats à grande échelle peut accroître efficacement la production de poissons à l'échelle du bassin versant à un coût qui pourrait se comparer à la production de saumoneaux en écloserie. [Traduit par la Rédaction]

Introduction

Conservation concerns over declining fish populations (e.g., Slaney et al. 1996) and widespread degradation of aquatic habitats throughout the world have led to increased recovery efforts for fish populations (Roni et al. 2005, 2008). Pacific salmon species are of particular interest in western North America because of their commercial, ecological, and cultural value (Slaney et al. 1996; Cederholm et al. 1999; Gende et al. 2002). Salmon populations have declined severely since the 1800s as a consequence of overharvest, dams, and widespread habitat degradation from land use activities, including mining, logging, and agriculture, resulting in many runs being listed as threatened or endangered (Nehlsen et al. 1991; Ruckelshaus et al. 2002; Lackey et al. 2006). To address widespread population declines, habitat restoration efforts have become popular throughout the globe as a strategy to mitigate the negative effects of habitat degradation (National Research

Council 1992; Cowx and Welcomme 1998). An estimated US\$14 to US\$15 billion has been spent on freshwater habitat restoration in the USA alone since 1990, averaging roughly US\$1 billion a year (Bernhardt et al. 2005).

Despite the billions of dollars spent annually on watershed restoration, the benefits of this investment are poorly documented in terms of the biological response to habitat change (e.g., increases in fish biomass or production). Credible large-scale studies examining the effectiveness of restoration are rare (Paulsen and Fisher 2005), and many restoration projects keep poor records of construction and maintenance costs (Bernhardt et al. 2005). With the lack of statistically rigorous evidence, there has been a dependence on models and expert opinion for effectiveness evaluation (Sutherland et al. 2004), which makes it challenging to assess the benefits of any investment or competing recovery techniques. Consequently, there has been recognition of an acute need for

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L. Ogston. Department of Ecology & Evolutionary Biology, University of Toronto, 25 Harbord Street, Room 415, Toronto, ON M5S 3B2, Canada.

S. Gidora and M. Foy. Fisheries and Oceans Canada, Unit 3, 100 Annacis Parkway, Delta, BC V3M 6A2, Canada.

J. Rosenfeld. British Columbia Ministry of Environment, 2202 Main Mall, The University of British Columbia, Vancouver, BC V6T 1Z4, Canada.

Corresponding author: Jordan Rosenfeld (e-mail: jordan.rosenfeld@gov.bc.ca).

effective postconstruction assessment and monitoring (Bash and Ryan 2002; Downs and Kondolf 2002).

Development on river floodplains is a widespread land use impact that has greatly reduced the abundance and complexity of riverine habitat worldwide (Beechie et al. 1994; Sparks 1995). Roads, levees, channel straightening and hardening, and cumulative impacts from urban and agricultural development all tend to isolate seasonally or permanently wetted floodplain habitats from the main channel. Floodplain (off-channel) habitats encompass sloughs, side channels, beaver ponds, and other permanently or seasonally flooded areas and represent important rearing habitat for juvenile salmonids and other fish and amphibian species (Beechie et al. 1994; Blackwell et al. 1999; Pollock et al. 2004). This relatively slow-water habitat is especially important for juvenile coho salmon (*Oncorhynchus kisutch*), as they typically use it for both rearing and overwintering (Morley et al. 2005). Consequently, off-channel habitat is now regularly constructed to increase productivity for juvenile coho salmon throughout western North America (Slaney and Zaldokas 1997; Saldi-Caromile et al. 2004; Roni et al. 2006). Although various studies have documented the use of these restored habitats by juvenile coho or trout (e.g., Cederholm et al. 1988; Picard et al. 1998; Roni et al. 2010), the overall contribution of restored habitat to total production in a watershed, particularly the production of out-migrating smolts, is rarely known (with some notable exceptions, e.g., Solazzi et al. 2000).

This study evaluates the effectiveness of habitat restoration in the Chilliwack River watershed in coastal British Columbia, Canada, which is broadly representative of coastal rivers in that much of the valley bottom has been impacted by extensive historic and contemporary logging activities, resulting in reduced channel complexity and extensive loss of off-channel habitat. As a consequence, Fisheries and Oceans Canada in conjunction with the BC Ministry of Environment Watershed Restoration Program initiated construction of seven major off-channel habitat restoration projects in the upper Chilliwack River watershed between 1996 and 2000, creating a total of 157 000 m² of new habitat. Each project involved construction and reconnection of floodplain habitat to the main stem, intended primarily to restore rearing habitat for juvenile coho salmon; however, two of the restoration sites also included construction of extensive spawning habitat for pink salmon (*Oncorhynchus gorbuscha*), and all sites were used by various life stages of coho, steelhead (*Oncorhynchus mykiss*), or Dolly Varden char (*Salvelinus malma*). In spring of 2002 an extensive marking program was carried out using smolt weir traps installed at the outlets of five of the restoration sites, with smolt recapture at a rotary screw trap located downstream on the main stem to estimate the contribution of fish produced in restored habitat to total wild coho smolt production.

Objectives were to determine production from restored habitat and to examine the degree to which this large-scale restoration increased overall production of coho salmon smolts at the watershed scale. Given the difficulty and considerable effort involved in a watershed-scale effectiveness assessment like this, our second objective was to compare the accuracy of existing area-based habitat capacity models for predicting coho smolt production with empirical estimates of production from restored habitat, so as to validate simpler and more cost-effective approaches for assessing restoration effectiveness. Our final objective was to use estimates of the costs of habitat construction to compare the costs of smolt production between restored habitat and hatcheries, so as to evaluate the cost-effectiveness of habitat restoration relative to hatchery production.

Methods

Study area

The study was conducted in the upper watershed of the Chilliwack River, British Columbia, upstream of the Chilliwack River

Hatchery (Fig. 1). The upper watershed includes Chilliwack Lake (12 km²) and a total of 69 linear kilometres of accessible mainstem and tributary habitat in both the United States and Canada. The Chilliwack River originates in Washington State, where the majority of the first 20.5 km of anadromous main stem upstream of Chilliwack Lake is pristine old-growth forest within the North Cascades National Park. Much of the habitat downstream of Chilliwack Lake on the Canadian side is second-growth forest that has been heavily impacted by past logging activities, resulting in reduced woody debris recruitment, increased sediment inputs, and decreased channel complexity (Cleary 2001). Road building and logging on the floodplain has also contributed to isolation of off-channel habitat (Picard et al. 1998; Blackwell et al. 1999). The mainstem Chilliwack between the hatchery and lake is a relatively high power boulder-cobble channel ranging from 40 to 80 m bankfull width in a variably confined valley bottom, with a mean annual discharge of 66 m³·s⁻¹. The entire watershed is an important producer of all seven species of Pacific salmon and supports an intensive freshwater sport fishery. Considerable angler effort is directed toward coho salmon, which are sustained in large part by production from the Chilliwack River Hatchery.

This study focused on production of wild fish in the upper watershed (fish are not stocked upstream of the hatchery; the "upper watershed" refers to the area upstream of the hatchery, where the downstream screw trap was located; Fig. 1). Like most anadromous salmon, adult coho spawn in freshwater streams and rivers in the fall, and fry emerge from the gravel in late spring; juvenile coho typically rear for a summer in fresh water, overwinter in suitable habitat, and then migrate to the ocean as smolts the following spring before returning to spawn as 3-year-old fish. Although there is suitable mainstem spawning habitat downstream of the hatchery, there is limited mainstem coho spawning habitat in the 14 km reach between the hatchery and the lake (Fig. 1), where the main stem is a fast-flowing boulder-cobble channel with a high velocity thalweg (Fedorenko 2002). Aside from several natural side channels and the lake outlet, most spawning in this reach of the upper watershed is confined to tributaries or constructed off-channel habitat (Fedorenko 2002).

Habitat restoration became a focus in the watershed during the early 1990s as part of the BC Watershed Restoration Program, a partnership between the provincial Ministry of Environment, Ministry of Forests, and Fisheries and Oceans Canada (Cleary 2001). Much of the restoration involved building or reconnecting off-channel habitat on the river floodplain, and this study focuses on determining the specific cumulative production benefits from the seven major side-channel habitats constructed in the upper watershed during this period.

Side channels were constructed by diverting river water into a series of interconnected stream and pond complexes at suitable sites on the river floodplain (Fig. 2; Picard et al. 1998; Cleary 2001). Upper Bulbeard, Lower Bulbeard, Angelwing, Millenium, and Centre Creek Camp sites were designed to be primarily rearing habitat for juvenile coho, with inclusion of spawning habitat sufficient to saturate constructed rearing habitat (Table 1). The Centennial and Yukalap complexes were designed to be mostly spawning channels for pink salmon, with less than 50% of total wetted area considered to be good quality rearing habitat for juvenile coho. All of the sites represented newly constructed habitat, with the exception of Millenium Ponds, where a preexisting beaver pond complex was greatly enlarged. Restored habitat was characterized by two habitat extremes: slow-water ponds, or flowing channels suitable for spawning as well as rearing (Cleary 2001; Rosenfeld et al. 2008), although most sites contained a mixture of both. Most large ponds were created by enlarging existing ponds through the addition of downstream berms, although some ponds were created through excavation, primarily at Centennial Channel. All side channels incorporated deeper pond habitat (maximum depths in excess of 2 m) suitable for overwintering. Constructed habitat generally

Fig. 1. Chilliwack River watershed showing locations of restored off-channel sites (1–5) and the location of the downstream screw trap (ST) for catching out-migrating smolts in the mainstem. The broken line indicates the watershed boundary. 1, Angelwing side channel; 2, Millenium Ponds side channel; 3, Centennial and Upper and Lower Bulbeard side channels; 4, Centre Creek Camp side channel; 5, Yukalup side channel.

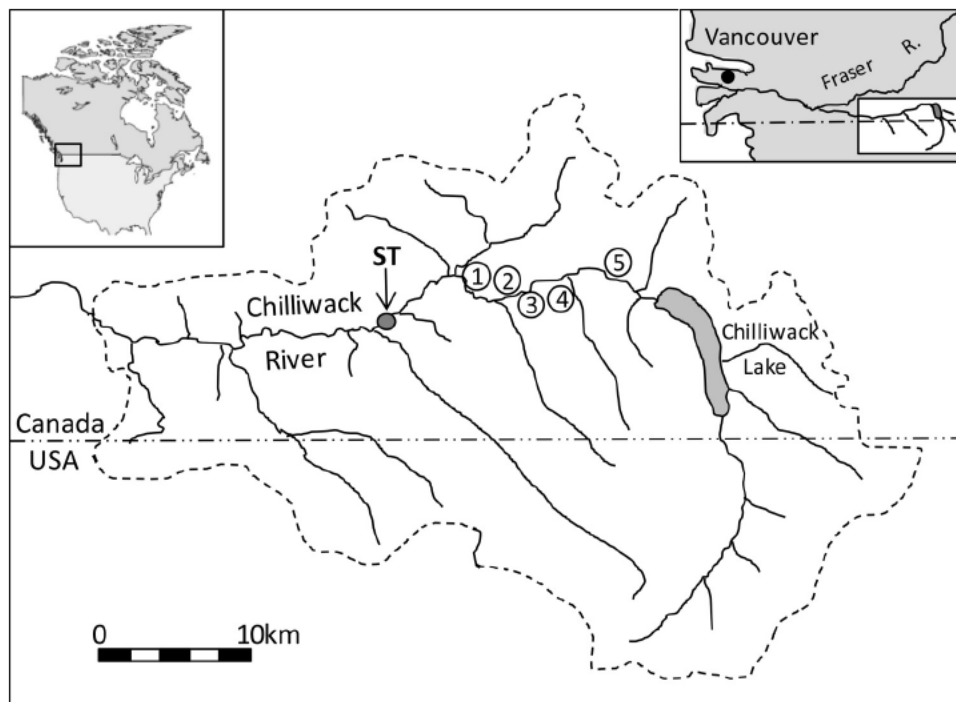
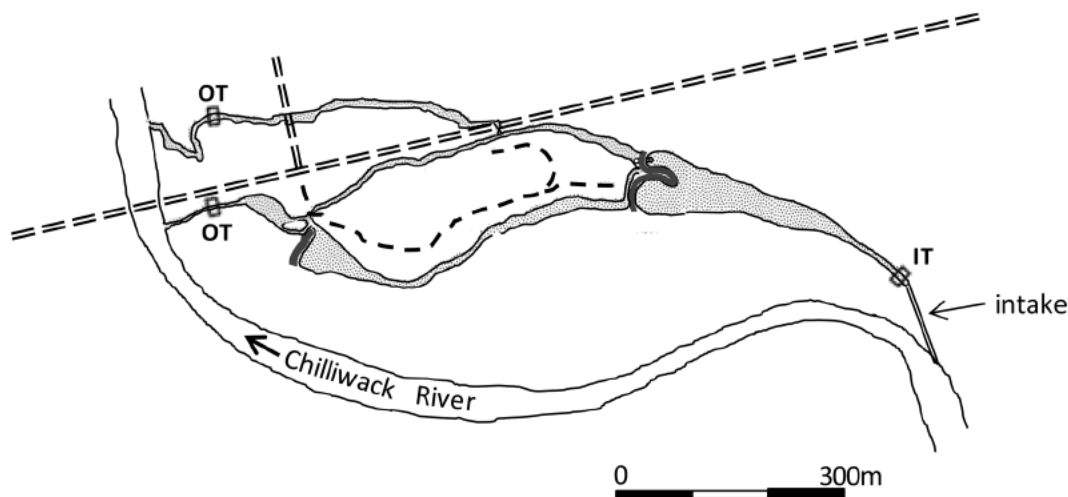


Fig. 2. Plan view of a typical side channel (Angelwing). Grey stippled area indicates side-channel habitat, and thick lines downstream of ponds represent berms. Parallel broken lines are main roads, and the single broken line is an old skid road. The location of the inlet smolt trap immediately below the 60 cm diameter intake pipe is indicated by IT; OT indicates the locations of the two outlet traps, which were placed some distance above the mainstem Chilliwack River confluence to prevent back-flooding of traps during high water.



followed natural drainage patterns and abandoned side channels on the floodplain or historical floodplain (benches).

Coho smolt production estimates from restored habitat using downstream weir counts

To determine the number of out-migrating smolts produced from restored habitat, converging downstream weir traps were used at Upper Bulbeard, Lower Bulbeard, Angelwing, Millenium, and Centennial restoration sites. Each downstream weir trap consisted of 1 m by 2.5 m wooden panels screened with 0.5 cm × 0.5 cm galvanized wire mesh grid, a 15 cm diameter plastic entrance pipe, and a welded aluminum trap box with screened sides. Weirs were

installed during 25 March to 8 April 2002; two weirs were placed at the Angelwing site as there were two outlets. All traps were operational from 9 April to 14 June. Weirs were thoroughly cleaned and inspected for damage each day and repaired as necessary.

All captured fish were identified to species and fork length measured to the nearest millimetre. Out-migrating fish were classified as smolts using a 70 mm length threshold (i.e., fish less than 70 mm were considered to be parr that were redistributing in the watershed rather than smolting in their first year, thereby supporting conservative estimates of smolt production). The inlet flows at Upper Bulbeard, Lower Bulbeard, and Millennium were

Table 1. Characteristics of restoration sites in the upper Chilliwack River valley, including the year when restoration was completed, site length, area, mean female adult spawner returns from trap counts from 1998 to 2000, and predicted female spawners needed to fully seed juvenile rearing habitat (after Reeves et al. 1989).

Site	Date of construction	Length (km)	Total area (m ²)	Spawning area (m ²)	Observed spawners	Predicted saturated spawners
Centennial	1996	2.1	30 100	4 300 ^a	—	—
Upper Bulbeard	1996	1.8	17 500	2 500 ^a	360 ^b	431 ^b
Lower Bulbeard	1998	3.7	58 000	8 200 ^a		
Angelwing	1998	2.1	11 200	2 050	157	64
Millennium	2000	3.1	42 000	2 000	302	240
Yukalap	1997	0.5	4 400	2 000	64	25
Centre Creek Camp	2000	1.2	6 500	1 100	30	37

^aProrated based on a combined estimate of spawning habitat area for Centennial and Upper and Lower Bulbeard channels.

^bSpawner counts for Upper and Lower Bulbeard are combined.

screened during the smolt out-migration to prevent downstream migrants produced in the upper (natural or mainstem) habitat from mixing with those from the restored site and inflating smolt production estimates. Because of the large number of smolt traps that had to be maintained during the spring of 2002, it was not possible to install similar traps to exclude smolts from water flowing into Centennial and Angelwing side channels. Instead, smolt counts from traps installed at these side-channel intakes in 1999 and 2000 (Fisheries and Oceans Canada, unpublished data) were used to correct production estimates (i.e., by subtracting the mean number of smolts entering the side channels through the river intakes based on the previous year's data). Cumulative smolt counts at side-channel intakes were generally low (i.e., on the order of ~4% of total out-migrating smolts).

Coho smolt production estimates from restored habitat using minnow trap mark-recapture

Because the logistic demands of operating multiple traps limited the number that could be installed, and marking all out-migrating fish is not essential for a stratified population estimate (Arnason et al. 1996), we estimated coho presmolt abundance in Yukalap and Centre Creek Camp sites using mark-recapture rather than smolt traps. Smolts were initially captured at Centre Creek Camp on 12–13 March 2002 and at Yukalap on 26–27 March using wire mesh minnow traps baited with 2 g of preserved roe and set for 24 h. Smolts were anesthetized with dilute clove oil dissolved in ethanol, counted, and marked by clipping a very small portion of the upper caudal fin. Fish were allowed to recover, then released uniformly throughout each restored habitat. Smolts were recaptured using 50 wire mesh minnow traps on 25 and 26 March at Centre Creek Camp and 3 and 4 April at Yukalap. The Peterson formula (Seber 1982) was used to estimate population size and 95% confidence intervals. We assumed that the very small upper caudal fin clip had regrown by the time the rotary screw trap (for capturing all downstream migrants) was operational (16 April to 7 June). This assumption is supported by the observation that upper caudal fin clip marks do not appear in the rotary screw trap until 14 May, after smolts from the other sites had been marked with this tag (refer to online supplementary data, Tables S1 to S3¹). Because production from Yukalap and Centre Creek Camp side channel was small compared with the other sites, smolts from these two sites were not marked for the stratified population estimate (where marking of fish serves the function of providing an estimate of the downstream screw trap capture efficiency).

Marking fish from restored habitat

The mark-recapture design was stratified by time (a different mark was used on fish captured at all weirs over approximately weekly time intervals); stratification allows for more precise population estimates because it permits both capture probability and the proportion of fish marked to vary over time (Arnason et al. 1996). Out-migrating smolts trapped at weirs were batch-marked with a different mark approximately every week (Tables S1 to S3¹) by applying a subdermal tattoo with a Pan-Jet dental inoculator (Herbinger et al. 1990) or a small fin clip on either the upper or lower lobe of the caudal fin. Tattoos were used for the first two marking periods. Upper and then lower caudal clips were used at the peak of migration for ease of application and identification. Upper then lower tattoos were used again for the last two batches. To mark smolts, fish were anesthetized with a bath of dilute clove oil dissolved in ethanol, marked, placed in a recovery bucket that was aerated with a battery operated pump, and released after they had recovered from the marking process. Fish that showed signs of injury during handling (through trapping, dip-netting, etc.) were not marked to prevent mortality en route to the downstream screw trap from inflating the population estimate.

Recovery of marked fish to estimate total smolt production

Recovery of marked smolts at a downstream rotary screw trap was used to estimate trap capture efficiency, and in conjunction with capture of unmarked smolts provided an estimate of the population size of outmigrants from the entire upper watershed (restored and unrestored habitat combined). The 2.0 m diameter rotary screw trap was installed in the upper Chilliwack River main stem (54.6391°N, 59.8917°E) adjacent to the intake for the Chilliwack River Hatchery (Fig. 1) and was operational from 16 April to 7 June. The rotary screw trap was suspended in the main river flow from a welded aluminum boom bolted to the deck of the hatchery intake. A pulley system using high tension climbing rope was used to winch the trap into place for fishing or cleaning. All captured fish were identified to species, juvenile coho were counted and recorded as unmarked or marked smolts, and the type of mark was identified. From the downstream weir trap counts it was known that 9% of the marked smolts migrated out either before or after the rotary screw trap was in place, necessitating an adjustment for this sampling bias (described below).

Data analysis

Mark-recapture data from the rotary screw trap were analyzed using the Stratified Population Analysis System (SPAS; Arnason

¹Supplementary data are available with the article through the journal Web site at <http://nrcresearchpress.com/doi/suppl/10.1139/cjfas-2014-0189>.

et al. 1996; available from www.cs.umanitoba.ca/~popan/ using six (~weekly) temporal strata. SPAS provides a likelihood-based mark-recapture population estimate, but allows the user to divide (stratify) marks and recaptures by different time intervals, allowing for the detection of temporal variation in recapture probability (Arnason et al. 1996). Because the data were stratified by time, a maximum likelihood Darroch estimate was used to calculate the population of the entire watershed (i.e., from both natural and restored habitat). Direct counts from the five downstream weir traps and the minnow trap mark-recapture estimates from Yukalup and Centre Creek Camp side channels were combined to estimate total smolt production from restored habitat. This number was then divided by the stratified population estimate for the entire watershed to calculate the proportion of coho smolts produced from restored habitat within the upper Chilliwack watershed.

The mark-recapture population estimation approach involved several key assumptions. First, it was assumed that marking does not affect the capture probability of fish at the downstream screw trap. This is reasonable, since marks were small and minimally invasive, only visibly healthy or uninjured fish were marked, and fish were generally not recaptured for several days after marking, providing adequate time for recovery from handling. Tag loss between marking and recapture was also assumed to be minimal, which is realistic since most fish were recovered within 10 days. It was further assumed that mortality was minimal en route to the downstream screw trap. Some unknown level of mortality and tag loss were likely present, but this would contribute to an underestimate of trap efficiency, resulting in an overestimate of the wild smolt population and therefore ensuring a conservative estimate of the proportion of smolts from restored habitat (which was estimated independently based on counts from outlet traps and minnow trapping). Finally, equal capture probability of smolts from natural and restored habitat is also implicit.

Accounting for the potential contribution of mainstem fish to off-channel smolt production

Because side-channel habitats are open to immigration, some of the smolts captured in side-channel outflow traps could represent mainstem production (i.e., individuals that reared in the main stem but overwintered in off-channel habitat). The most robust study design for documenting changes in production following watershed restoration is a before–after control–impact (BACI) design, where watershed-scale smolt production is measured before and after restoration (e.g., Solazzi et al. 2000). Measuring annual smolt out-migration in the main stem before and after upstream restoration would eliminate concerns about how movement from the main stem into side channels might bias interpretation of side-channel out-migration. However, resource limitations precluded a multiyear before–after assessment in this study. Consequently, the assumptions underlying our smolt trap data need to be carefully assessed if production is to be attributed to newly created habitat with confidence. In this section we consider the potential for movement of fish into restored habitat to inflate estimates of production from restored habitat. We then describe approaches used to estimate the proportion of smolt production of potential mainstem origin, to provide a more robust assessment of the likely contribution of restored habitat to total watershed-scale production.

Skeptics rightly question the reliability of observed use of restored habitat as evidence of increased productive capacity, since colonization of new or restored habitat may indicate redistribution of fish rather than a reach-scale population increase (Gowan et al. 1994; Riley and Fausch 1995; White et al. 2011). This is a reasonable criticism in terms of rigorous effectiveness assessment; however, the assumptions implicit in this scenario warrant careful consideration. Movement of fish into newly created habitat indicates that the new habitat has higher intrinsic quality than

vacated habitat (e.g., Hansen and Closs 2009) or lower density-dependent limitation of growth (i.e., competition). Colonization of new habitat may represent a loss of production from vacated habitat, but only if the previously occupied habitat is under-recruited. In other words, an increase in rearing habitat will have no population response if the overall population is recruitment-limited (e.g., through insufficient spawning habitat or poor marine survival; Reeves et al. 1989). This is primarily a concern for restoration that creates rearing habitat but not spawning habitat and should not be an issue if restoration includes sufficient spawning habitat to saturate newly constructed rearing habitat.

If newly created off-channel habitat is saturated with juvenile recruits from in situ spawning within constructed side channels, then high juvenile abundance in off-channel habitat will reduce realized habitat quality (*sensu* Kramer et al. 1997) and act as a partial barrier to mainstem immigrants for summer rearing (but not for fall immigrants seeking overwintering habitat, which may be largely density-independent in deep off-channel pond habitat). All off-channel habitats were designed to have sufficient spawning habitat to fully recruit available rearing habitat (Table 1). However, to infer with confidence that smolt production from constructed side-channel habitats represents an increase in overall system productivity (rather than a redistribution of fish), it is important to demonstrate that in situ spawning is sufficient to fully recruit newly constructed side channels.

To evaluate whether side-channel habitat was likely saturated, we compared observed spawner counts in constructed habitat with the estimated number of adult female coho spawners required to saturate (fully seed) juvenile habitat using the formula from Reeves et al. (1989), where the optimum number of female coho per kilometre of stream equals $[\text{total rearing area} / (\text{linear kilometres of stream} \times \text{area per smolt} \times \text{egg-smolt survival} \times \text{fecundity})]$. Area per smolt, egg-smolt survival, and fecundity were set at 3–3.5 smolts·m⁻², 0.02, and 2500 eggs per female, respectively, after Reeves et al. (1989).

Precisely estimating the proportion of off-channel parr and smolt production that is of mainstem origin would require operating fish traps at side-channel inlets and outlets throughout the year, which was not feasible at multiple sites. However, the mean number of juvenile recruits of mainstem origin can be estimated based on smolt production in the first year of side-channel operation, before the progeny of the first spawning fish have matured. Because spawning takes place in the first year of side-channel operation, parr that colonize in the first year are of mainstem origin, and recruits from in situ spawning only appear in smolt traps in the second year after construction. Consequently, we estimated the proportion of smolts of mainstem origin based on the observed increase in smolt production in the second year following side-channel construction, for the limited subset of side-channel habitats where this data was available. We were able to obtain suitable serial annual data on smolt out-migration from four side-channel habitats in British Columbia: Worth Creek side channel (Norris Creek basin), Upper Paradise side channel (Cheakamus River), Mamquam side channel (Mamquam River; Sheng et al. 1990), and Upper Bulbeard side channel (Chilliwack River). The percentage of smolts of mainstem origin was calculated as the first year outmigrant count divided by the mean outmigrant count in subsequent years when offspring from in situ spawners were present (Table 2). We adjusted estimates of side-channel production to account for mainstem recruits by reducing observed outmigrant numbers by the maximum observed proportion of mainstem recruits, thereby generating a conservative lower bound to smolt production from side-channel habitats. An upper bound to estimated smolt production was generated by assuming that all outmigrants recruited from side-channel habitat (i.e., no mainstem recruitment).

Because overwinter survival in off-channel habitats is generally much higher than that in hydraulically harsh coastal river main

Table 2. Proportion of smolts recruiting from the main stem, based on the assumption that smolt out-migration the year after channel construction is based entirely on mainstem recruits (i.e., that smolts from in situ spawning only appear in traps 2 years postconstruction).

Project	River	Area (m ²)	Brood year	Smolt recruitment from the main stem	Smolt recruitment from in situ reproduction and the main stem	Recruits from main stem (%)
Worth Creek	Norrish Creek	850	1978	81		21%
			1980		87	
			1981		120	
			1982		120	
			1984		285	
			1985		856	
			1987		877	
Upper Paradise	Cheakamus River	2 625	Avg.	1 580	391	30%
			1981			
			1982		8 240	
			1983		6 228	
			1984		4 453	
			1985		5 483	
			1986		4 923	
Mamquam	Mamquam River	2 000	1987	157	2 355	3.6%
			Avg.		5 280	
			1983			
			1984		5 813	
			1985		1 126	
			1987		6 265	
			Avg.		4 401	
Upper Bulbeard	Chilliwack River	17 500	1997	568		6.6%
			1998		8 750	
			1999		7 350	
			2000		9 385	
			Avg.		8 562	

stems that experience sustained winter flooding (Quinn and Peterson 1996; Solazzi et al. 2000), any increased overwinter survival in side-channel habitats for fish of mainstem origin can reasonably be attributed to side-channel production. We therefore reviewed the literature on overwinter survival of coho in mainstem versus side-channel habitats to estimate a survival differential between habitats and multiplied the proportion of smolts of mainstem origin by this factor to determine the proportion of their production that could be attributed to occupancy of restored habitat.

Evaluation of existing smolt production models

To compare the accuracy of existing habitat capacity models for predicting coho production from restored habitat, we estimated smolt production from each of the seven restored sites using three area- and one length-based habitat models from the literature: (1) smolt production = $0.37 \times \text{area (m}^2\text{)}$, from Roni et al. (2010); (2) smolt production = $8.05 \times \text{area}^{0.61} \text{ (m}^2\text{)} - 145$, from Rosenfeld et al. (2008); (3) smolt production = $2951 \times \text{area}^{0.51} \text{ (ha)}$, from Keeley et al. (1996); and (4) watershed smolt production = $992 \times \text{total stream length}^{0.97} \text{ (km)}$, from figure 1 in Bradford et al. (1997) and also assuming a mean smolt production of 2060 smolts·km⁻¹ based on mean smolt abundance reported by Bradford et al. (1997, their table 4) for streams between 48°N and 50°N latitude. Production was calculated using the total area of each individual restoration site for the first three models, and watershed-scale smolt production was estimated from the Bradford et al. (1997) model using total stream length for all mainstem and tributary habitat in the upper watershed (69 km), as well as an additional 20 km of shoreline on Chilliwack Lake. Model fit was evaluated based on the mean deviation of observed and predicted smolt production for each model.

Costs of habitat restoration and smolt production

The costs of restoration for each site were recorded at the time of construction, and the total costs of all restoration activity was

determined by the costs of supporting grants and matching funds (e.g., Fisheries and Oceans Canada labour). Annual maintenance and minor upkeep expenses were also recorded following construction. The mean restoration cost for the sites was compared with the mean restoration cost for a typical Puget Sound, Washington, habitat as reported in Roni et al. (2010) and earlier studies. To place the costs and benefits of restoration in a broader management context, we also compared the mean costs of smolt production from restored habitat with hatchery production (both amortized over a 30-year period). We used the lower bound on estimated smolt production (assuming maximal mainstem recruitment) to provide a liberal estimate of smolt production costs from restored habitat.

Estimates of hatchery production costs for coho were obtained from Radtke and Carter (2009) and National Marine Fisheries Service (2014) for state and federal hatcheries from the Pacific Northwest United States (Washington, Oregon, and Idaho). Estimates included annual hatchery operation costs reported by state and federal agencies, agency administration costs, fixed capital infrastructure costs, and costs of smolt acclimation and release (see Radtke and Carter 2009 and National Marine Fisheries Service 2014 for details). Mean reported coho smolt production costs reported by Radtke and Carter (2009) and National Marine Fisheries Service (2014) were, respectively, US\$1.10 and US\$0.90 (in 2009 dollars). We assumed that hatchery costs for coho smolt production in coastal British Columbia were similar to those reported for the Pacific Northwest United States.

Results

Smolt out-migration from each of the restored sites ranged from 740 to 53 840 smolts, and smolt density ranged from 0.17 to 0.75 smolts·m⁻² (Table 3), with a mean smolt density of 0.48 smolts·m⁻². Yukalap had the lowest smolt density and production because of the habitat design for use primarily as spawning channels. The

Table 3. Coho smolt production from restored sites in 2002, including population estimation method, estimated production over 30 years, and smolt density for individual restored sites in the upper Chilliwack River valley.

Site	Estimation method	No. of smolts	Smolt density (smolts-m ⁻²)	Smolt production over 30 years
Centennial	Count	12 210	0.41	366 300
Upper Bulbeard	Count	9 590	0.55	287 700
Lower Bulbeard	Count	32 050	0.55	961 500
Angelwing	Count	8 350	0.75	250 500
Millenium	Count	16 350	0.39	490 500
Yukalap	PPE	740±390	0.17	22 200
Centre Creek Camp	PPE	3 560±1 010	0.55	106 800
Total restored habitat		82 840±1 140		2 485 200

Note: Smolt production was calculated by either weir trap counts (Count) or a pooled Peterson estimate (PPE) using mark-recapture data. Smolt production over 30 years was calculated assuming that production remained constant at 2002 levels.

total number of smolts from restored habitat was 82 840 (±1.7%) (Table 3). Smolt production in 2002 was broadly similar to production in other years for the subset of Chilliwack valley side channels where data were available across multiple years (Table 4), indicating that 2002 smolt production is likely representative of long-term mean production.

A stratified maximum-likelihood Darroch estimate of coho smolt production from the entire upper Chilliwack watershed of 226 800 (±3.8%) fish was generated using SPAS (Arnason et al. 1996). Based on downstream weir counts at the restored sites, it was known that 9% of the total marked coho smolts out-migrated before or after the mainstem rotary screw trap was in place. The watershed population estimate was therefore adjusted upward by a factor of 9% to 247 200 (±3.8%) to include migration outside of the screw trap mark-recapture period. The ratio of smolts produced from restored habitat to total smolt out-migration (82 800 / 247 200) provides an upper bound of 34% on the contribution of constructed habitat to total watershed-scale smolt production (i.e., assuming that 100% of side-channel smolt out-migration is from side-channel production with no contribution from mainstem recruits).

Accounting for the potential contribution of mainstem fish to off-channel smolt production

Observed female coho spawner returns to side channels are similar to those required to fully seed juvenile rearing habitat (Table 1; calculated after Reeves et al. 1989, as described above), indicating that off-channel rearing habitat was at or near capacity from in situ reproduction in constructed habitat.

Comparison of smolt production in the year following construction (mainstem recruits only) with production in subsequent years (which includes in situ spawning in side channels) generated estimates of mainstem recruitment ranging from 3.6% to 30% (Table 2). A relatively low proportion of mainstem recruits may be expected when the area of the side channel is particularly large (e.g., Upper Bulbeard; Table 2), as is the case for most of the Chilliwack River side channels (e.g., Fig. 2; Table 1), since a large area would tend to dilute the potential contribution from any fixed pool of local mainstem recruits.

Thirteen estimates of stream overwinter survival and five estimates of pond overwinter survival were extracted from the literature (Table 5). This literature indicates significantly lower overwinter survival in mainstem versus side-channel habitat (24% versus 68%, respectively; *t* test, *t*_[16] = 6.5; *P* < 0.0001; Table 5), with a survival differential of approximately 40% between habitats (mean stream survival = 24.4%; mean pond survival = 68.4%). This is broadly consistent with observations of increased winter survival in several before-after studies where restoration involved creation of deeper pond habitat (e.g., Cederholm et al. 1988; Solazzi et al. 2000).

Table 4. Smolt production data (outmigrants per square metre of habitat area) from off-channel habitats in the Chilliwack drainage for which data measured across multiple years were available.

Site	1997 ^a	1998 ^b	1999 ^b	2002 ^c
Upper Bulbeard	0.03	0.50	0.42	0.55
Lower Bulbeard	—	1.63	0.75	0.55
Millenium (14 Mile)	0.36	—	—	0.39
Thurston	0.14	0.21	—	—
R4	0.3	0.08	—	—
Anderson	0.48	0.21	0.07	—

Note: Interannual variation is moderate, suggesting habitat saturation and limited variation in productive capacity across years. 2002 smolt production reported in the present study appears broadly representative of production in other years, with the notable exception of very low smolt production in Upper Bulbeard in 1997. Upper Bulbeard was constructed in 1996, so that reduced smolt outmigrants in 1997 reflect, in part, an absence of in situ recruitment from spawning within the side channel.

^aData from Blackwell et al. (1999).

^bUnpublished monitoring and assessment data, Fisheries and Oceans Canada, Pacific Region, Resource Restoration Division.

^cThis study.

The maximum likely proportion of side-channel smolt out-migration attributable to mainstem production was therefore calculated as 0.3 (assuming 30% mainstem recruitment; Table 2) multiplied by 0.6 (assuming that 40% of production from mainstem recruits could be attributed to off-channel production through higher overwinter survival), yielding a final proportion of 0.18. Reducing smolt production attributable to off-channel production by 18% yields a conservative lower bound to smolt production from side-channel habitats of 67 900 / 247 200 = 27.5%. Therefore the percentage of total coho smolt production supported by restored habitat was in the range of 27%–34%, indicating a substantial contribution of restored habitat to smolt production at a watershed scale. Even in the extremely conservative (and unrealistic) scenario of all side-channel smolts recruiting from mainstem habitat, an overwinter survival differential of 40% would still mean that 13.4% (82 840 × 0.4 / 247 250) of watershed-scale smolt production was attributable to restored habitat.

Evaluation of existing smolt production models

Of the three published area-based smolt production models, Roni et al. (2010) provided the most accurate predictions of smolt production (Table 6), with a mean 25% error compared with up to 76% for the other models. Surprisingly, the simple production formula from Roni et al. 2010 (assuming a fixed production of 0.37 smolts-m⁻²) provided better production estimates than models generated using data sets that included smolt production from the actual study sites (e.g., Rosenfeld et al. 2008). The stream length-based regression production model (Bradford et al. 1997)

Table 5. Overwinter survival estimates extracted from the literature for coho parr in mainstem versus off-channel pond habitats.

Study	Stream	Habitat ^b	Survival (%)	Region	Study duration (years)
Hauer 2013	Freshwater Creek ^a	Stream	32	Calif.	2
Roni et al. 2012	East Twin Creek ^a	Stream	23	Wash.	3
	West Twin Creek ^a		22	Wash.	3
Brakensiek and Hankin 2007	Prairie Creek	Stream	46	Calif.	1
Crone and Bond 1976	Sashin Creek	Stream	35	Alaska	3
Solazzi et al. 2000	East Fork Lobster Creek ^b	Stream	19	Ore.	7
	Upper Lobster Creek ^c		13	Ore.	3
	Moon Creek ^b		15	Ore.	7
	East Creek ^c		11	Ore.	2
Quinn and Peterson 1996	Big Beef Creek	Stream	36	Wash.	2
Ebersole et al. 2009	West Fork Smith River ^d	Stream	10	Ore.	3
Nickelson 1998	Five unidentified streams ^e	Stream	22	Ore.	—
Bustard and Narver 1975	Carnation Creek	Stream	35	B.C.	—
Bustard and Narver 1975	Carnation Creek	Pond	68	B.C.	1
Nickelson 1998	Five unidentified streams ^e	Pond	49	Ore.	—
Peterson 1982	Clearwater River ^f	Pond	78	Wash.	1
Cederholm et al. 1988	Clearwater River	Pond	56	Wash.	2
Dekker 1999	Coquitlam River ^g	Pond	91	B.C.	1

Note: A single value was calculated for each stream or pond based on the mean of reported annual survival for multiyear studies.

^aMean of apparent survival and summed proportion survival (which counts fall outmigrants as survivals rather than mortalities; see Roni et al. 2012 and Hauer 2013).

^bControl stream in BACI restoration experiment.

^cTreatment stream, including pretreatment years only from the BACI restoration experiment.

^dData extracted from figure 3 of Ebersole et al. (2009), under the conservative assumption that survival in the Chilliwack River main stem (700+ km² watershed) is equivalent to the maximum basin area in their figure 3.

^eData extracted from figure 2 of Nickelson (1998), including two beaver ponds.

^fFor deep ponds with a maximum depth well in excess of 1.3 m, which includes all those in this study.

^gMean value for two ponds; see table 3.5 of Dekker (1999).

Table 6. Comparison of observed coho smolt production with estimated production from published habitat models for individual restored sites and the total watershed (natural and restored habitat combined) in the upper Chilliwack River valley.

Site	This study	Roni et al. 2010	Rosenfeld et al. 2008	Keeley et al. 1996	Bradford et al. 1997
Centennial	12 200	11 140	4 200	5 180	—
Upper Bulbeard	9 590	6 480	3 110	3 930	—
Lower Bulbeard	32 050	21 460	6 330	7 230	—
Angelwing	8 350	4 140	2 230	3 130	—
Millenium	16 350	15 540	5 180	6 140	—
Yukalap	740	1 630	1 200	1 940	—
Centre Creek Camp	3 560	2 410	1 560	2 370	—
Total watershed ^a	247 250				77 250 ^b / 183 550 ^c
Mean error (%)		25%	72%	40%	76% / 26%

Note: Mean error is calculated as the mean deviation of predicted values from observed.

^aThe maximum likelihood Darroch estimate of 226 830 is adjusted upwards by 9% to account for truncated duration of the screw trap set relative to the out-migration window (see text for details).

^bEstimate based on the smolt production versus stream length regression from Bradford et al. (1997; their figure 1, smolt production = 992 × total stream length^{0.97} (km)).

^cEstimate based on a mean smolt production of 2060 smolts·km⁻¹, the mean reported for streams between latitudes 48°N and 50°N (see Bradford et al. 1997, their table 4).

performed poorly at the watershed scale, but the mean value of 2060 smolts·km⁻¹ for midlatitude smolt production reported by Bradford et al. (1997; Table 4) produced much better estimates when scaled up to the entire watershed.

Costs of habitat restoration and smolt production

The initial cost of restoration ranged from CAN\$7.65·m⁻² to CAN\$25.45·m⁻², and the cost of maintenance over a 30-year period (Table S4¹) ranged from CAN\$0.77·m⁻² to CAN\$18.41·m⁻², for a combined range of CAN\$8.58·m⁻² to CAN\$41.14·m⁻² to construct and maintain each site for 30 years (Table 7; cost in 2002 dollars). Sites that had a higher proportion of spawning habitat tended to be more expensive, indicating that creation of primarily rearing

habitat is most cost-effective for coho smolt production. Based on the coho smolt production estimates for 2002 (adjusted down to account for potential mainstem recruitment as described above), the initial cost per smolt ranged from CAN\$16.79 to CAN\$164.13 per smolt. Yukalap was the most expensive site because of its relatively large proportion of spawning habitat focused on pink salmon. Cost per smolt for all sites decreased greatly if prorated over 30 years (assuming constant smolt production), decreasing to US\$0.69 to US\$10.05 per smolt (Table 7). Both the initial mean cost of construction (CAN\$16.11·m⁻²) and combined mean initial cost plus 30-year maintenance cost (CAN\$24.44·m⁻²) were substantially lower than the mean floodplain construction and reconnection

Table 7. Characteristics and costs for each restoration site in the upper Chilliwack River Valley, in 2002 Canadian dollars.

Site	Initial cost (\$·m ⁻²)	Cost of 30 years maintenance (\$·m ⁻²)	Total cost (\$·m ⁻²)	Percent spawning habitat	Initial cost per smolt (\$·smolt ⁻¹)	Cost per smolt over 30 years (\$·smolt ⁻¹)	Cost per smolt (2009 CAN\$)	Cost per smolt (2009 US\$)
Centennial-Bulbeard	7.81	0.77	8.58	14	18.69	0.68	0.79	0.69
Angelwing	25.45	7.23	32.68	18	41.62	1.78	2.06	1.81
Millenium	7.65	2.76	10.41	5	16.79	0.76	0.88	0.77
Yukalap	22.73	18.41	41.14	45	164.13	9.90	11.48	10.05
Centre Creek Camp	16.92	12.46	29.38	17	37.73	2.18	2.53	2.21

Note: Costs are calculated from the maintenance and construction costs in Table S4¹ and are calculated based on conservative estimates of smolt production attributable to created habitat (i.e., total out-migration reduced by 18% to account for potential mainstem recruitment). The last two columns show costs per smolt in 2009 Canadian and US dollars, respectively, to allow comparison with published hatchery production costs.

costs recently reported elsewhere (US\$85–US\$150·m⁻²; Roni et al. 2010).

Discussion

The effectiveness of stream habitat restoration has proven somewhat controversial (Stewart et al. 2009; Bernhardt and Palmer 2011), with researchers expressing contrasting views on its costs and benefits (Thompson 2006; Whiteway et al. 2010). This controversy is partly driven by a lack of thorough assessments of the biological consequences and economic costs of restoring stream habitats (Bernhardt et al. 2005; White et al. 2011), which allows critics to legitimately question the benefits of investing in restoration. Studies that do demonstrate a positive response of fish to habitat restoration often show an increase in abundance at a relatively small spatial scale, supporting concerns that changes in abundance may reflect short-term redistribution rather than increased productive capacity (Gowan and Fausch 1996; Whiteway et al. 2010). Few studies have demonstrated fish production benefits of habitat restoration at a larger spatial scale distributed throughout a watershed, in part because of the substantial costs of both restoration and monitoring at larger scales (but see Solazzi et al. 2000 for a good large-scale BACI restoration experiment).

Generally speaking, the most rigorous study design for assessing restoration effectiveness is a replicated BACI experiment (Solazzi et al. 2000; although BACI is not without its shortcomings, see Johnson et al. 2005). Resource limitations prevented a BACI on the Upper Chilliwack River, where we directly measured smolt emigration from newly constructed habitat as an index of restoration effectiveness. Interpretation of our data is therefore subject to the same criticism as many postrestoration assessments: that fish use of restored habitat may simply represent redistribution, rather than an increase in production (implying recruitment rather than habitat limitation). In general, it needs to be demonstrated that the life stage targeted by restoration is in fact habitat-limited (i.e., that there are sufficient recruits in the population to saturate both existing and newly created habitat). The exception to this rule is when restoration increases both spawning and rearing habitat simultaneously, or if new habitat is expected to increase survival of the targeted life stage, in which case habitat restoration will result in a population response even if the population remains recruitment-limited (Greene and Beechie 2004; Einum and Nislow 2011). Demonstrating (or at least providing strong inference for) population limitation by habitat quantity (area) or quality (realized survival) should be a key aspect of habitat restoration planning and a precondition for restoration itself.

In the upper Chilliwack River, constructed habitat was designed to include sufficient spawning habitat to fully seed rearing habitat, and habitat capacity models and spawner counts indicate that side-channel habitats were likely fully recruited with juveniles from in situ spawning, indicating that movement of mainstem fish into side-channel habitats was unlikely to contribute overwhelmingly to side-channel production. Further, measured smolt out-migration in the absence of in situ side-channel spawn-

ing was available to inform a realistic upper bound on mainstem recruitment to side-channel habitats (i.e., a maximum 30% mainstem origin); this allowed correction of observed side-channel smolt production for potential mainstem subsidies, thereby generating realistic lower bounds on smolt production from restored habitat. Thus, observed habitat use, if conservatively interpreted with consideration of the potential for fish redistribution to bias results, can be used to make reasonable inferences about the effectiveness of habitat restoration.

Population-level effects of increased habitat quality, even under recruitment limitation (i.e., excess habitat), are exemplified by the mean 40% higher coho overwinter survival in deeper off-channel pond habitat (relative to the main stem) identified in the literature review. This implies that increased survival associated with better overwintering habitat in side channels should result in increased smolt production, even if juvenile coho were strongly recruitment-limited. In the Chilliwack River, even if all smolts out-migrating from side channels were of mainstem origin, increased survival from simply overwintering in the newly constructed side channels could in principle create an estimated watershed-scale increase in smolt production of 13%.

Distinguishing between limitation by habitat quantity versus habitat quality (Greene and Beechie 2004; Rosenfeld and Hatfield 2006; Einum and Nislow 2011) is a key consideration in the recovery planning and restoration process, since restoring habitat quality versus quantity have different population implications. At very low adult spawner population size increasing the quantity of juvenile rearing habitat quality will have no effect on juvenile abundance. Increasing the available rearing habitat capacity (i.e., the asymptote of the stock-recruitment curve) will only elicit a population response at large adult population sizes. In contrast, increasing habitat quality (e.g., overwinter survival) will increase stage-specific survival (particularly at low abundance) and therefore result in a population increase even at low adult numbers (i.e., by increasing the maximum slope of the stock-recruitment curve; Sharma and Hilborn 2001). Restoration such as side-channel construction that increases both rearing habitat quantity and quality (e.g., though increased area and overwinter survival in deep pool sections) represents the most robust type of intervention, since it increases both the slope and asymptote of the stock-recruitment curve (Sharma and Hilborn 2001; Bradford et al. 2005), providing production benefits at both high and low population sizes.

This study demonstrates that construction of off-channel habitat at multiple sites throughout the floodplain of a large river increased total coho smolt out-migration by anywhere from 27% to 34%. This represents a considerable increase, given the large size of the watershed (~600 km² upstream of the screw trap) and total smolt production (247 200 smolts). Detecting system-wide incremental effects of restoring individual sites in a watershed may be very difficult (Paulsen and Fisher 2005; Roni et al. 2010); the response to restoration in the upper Chilliwack drainage shows that the cumulative effect of individual restoration projects on system production can be substantial and supports the

inference of incremental benefits from individual restoration projects within a watershed, even if their individual effects may be difficult to detect.

The paucity of studies that rigorously evaluate the benefits of restoration is influenced by the high costs of project monitoring, a general desire by restoration practitioners to spend funds on habitat improvement rather than project evaluation, and a willingness of field biologists to consider observed use of restored habitat as adequate evidence of a positive biological response. While labour-intensive evaluations are necessary to assess the outcomes of habitat restoration, habitat capacity models that predict the consequences of habitat restoration can be a good substitute, provided there is confidence in model predictions and sufficient juvenile recruitment to fully saturate rearing habitat. We assessed the ability of several published models to predict observed smolt production from our off-channel habitats. The production models that included the Chilliwack River restoration sites as part of their calibration data sets (Keeley et al. 1996; Rosenfeld et al. 2008) performed relatively poorly (Table 6), generally underestimating production by a factor of four. The Bradford et al. (1997) average regression model that assumed a constant smolt production per linear kilometre of anadromous channel also underestimated production by a factor of about three, although their midlatitude coho smolt production estimate of 2060 smolts·km⁻¹ performed much better. Surprisingly, the model that best predicted the biological response to habitat change was the simplest (Roni et al. 2010), based on a constant production of 0.37 smolts·m⁻² of restored habitat. Given that the present watershed-scale assessment supports the accuracy of predictions from this model in a novel watershed, we suggest that it can be used as a simple approach for estimating the approximate production benefits of off-channel habitat restoration for juvenile coho, provided productivity of constructed habitat does not degrade over time.

While validated habitat capacity models provide a good first-order approach for estimating production from restored habitat, there is no substitute for direct measurement of smolt production to generate credible estimates of the costs of production from restored habitat. The range of estimated production costs per smolt from restored habitat (US\$0.69–US\$10.05, including capital costs over a 30-year period) overlapped with reported mean hatchery production costs (~US\$1.00 per smolt; Radtke and Carter 2009; National Marine Fisheries Service 2014), and production costs from two of five restored sites were below this mean reported value for hatchery production (Table 7). This indicates that off-channel habitat restoration in the Chilliwack River was, at some sites, as cost-effective as hatchery coho production, provided that restored habitats are maintained without any loss of production over time (which requires a long-term commitment by agency staff or local stewards). Note also that our maintenance costs do not include potential future expenses associated with renewing spawning gravel, which will eventually be required at some sites. Smolt production costs from restored habitat will also be sensitive to changes in marine survival, particularly if low adult returns cause rearing habitat to become under-recruited. On the other hand, this simple comparison of production costs tends to undervalue the relative benefits of production from restored habitat. Wild-reared juveniles from restored habitat arguably have higher value than hatchery-reared fishes, because they survive better in the wild and have higher reproductive success (Araki et al. 2007); similarly, production from restored habitat does not incur the potential risk of negative impacts on wild stocks sometimes associated with hatchery production (Meffe 1992; Araki and Schmid 2010). Constructed side-channel habitats also offer considerable production benefits to salmonids other than coho, including steelhead, Dolly Varden, and pink salmon, all of which were observed to spawn, rear, or overwinter in the restored habitats (Blackwell et al. 1999; Rosenfeld et al. 2008).

Finally, the restored channel and pond complexes provide habitat complexity on the floodplain that also benefits other wildlife (waterfowl, diving birds, etc.).

Our cost estimates for habitat construction were considerably lower than those recently reported elsewhere in the primary literature (e.g., Roni et al. 2010). We suspect that this is partly due to our use of local logging contractors and equipment for much of the work, and because most of the upper watershed is public land (provincial forest) where we were able to select from a wide variety of sites to optimize biological and cost-effectiveness; a more restricted suite of suitable sites (e.g., in a more urbanized watershed) might have constrained options and inflated costs. The presence of old logging roads from earlier forest harvesting also facilitated site access. There were also efficiencies that were realized by the scale of restoration that took place, including the ability to use liabilities from some projects as assets for others. For example, excavated fill from some sites was transported to a nearby site (Millenium) for constructing berms on the downstream end of natural beaver ponds to increase their depth and wetted surface area. Enlarging ponds in this way was among the most cost-effective form of habitat restoration; in contrast, the most expensive restoration site was Yukalup (Table 7), almost half of which was built as pink salmon spawning habitat, which both reduced mean coho production and greatly increased construction costs. Although our construction costs are low relative to those reported in Roni et al. (2010), they are comparable to reported smolt production costs associated with habitat restoration in earlier studies (e.g., ~US\$1.23·smolt⁻¹ from Solazzi et al. 2000; based on their reported costs and postrestoration smolt production, in 2009 dollars with values amortized over 30 years of smolt production, excluding maintenance costs).

Ideally, the primary goal of restoration is to reestablish the natural processes that generate and maintain habitat (Beechie et al. 2010). Although side-channel habitats were broadly designed after the natural side channels typically found on coastal river floodplains, intakes were generally engineered as hardened structures to resist erosion, and intake capacity was restricted to prevent scouring flows that could potentially alter or degrade constructed habitat. In contrast, natural side channels are stochastically subject to scouring flow, which removes fines and maintains substrate quality; unfortunately, their dynamic nature may also disrupt connection to the main stem through channel migration or avulsion, and relying on random stochastic events to create and maintain this habitat may leave much of it unproductive at any given time. The benefits of an engineered channel with a fixed intake structure regulating maximum flow include stable fish access and habitat capacity, even though this comes at the cost of a commitment to long-term maintenance to ensure that water intakes (and access for spawning adults) do not become blocked. While hard engineered restoration structures are more durable (stable) than natural side channels, they also have major limitations. For instance, one consequence of increased side-channel stability is that fine sediment drawn in from the main stem is not exported by the scouring flows that periodically remove sediment from natural floodplain habitats, resulting in a tendency for substrate quality to degrade over time in artificial side channels, necessitating the periodic removal of fines or addition of spawning gravel. Although fully restored natural processes are maintenance free, the benefits of stable production from engineered side channels may partly compensate for inputs of fines and the requirements of ongoing maintenance. However, future designs should consider the possibility of intakes that provide some potential for natural gravel recruitment or the ability to accommodate flows that can flush fine sediments without degrading engineered habitat structures.

With billions of dollars being spent on stream restoration worldwide (Roni et al. 2002; Bernhardt et al. 2005), it is important to assess whether or not these efforts are effective. This study

demonstrates that floodplain restoration for coho is not only effective in producing smolts at a watershed scale, but can be comparable in cost-effectiveness to hatchery production. Our study also strongly supports the inference that incremental restoration work within a drainage has cumulative production benefits even though the effects of minor projects may be difficult to detect. While intensive project evaluations like that presented here may not always be practical or even necessary, strategically chosen assessments of this nature are essential for understanding the effectiveness of ecosystem restoration.

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From: Jason Peltier

Sent: Tuesday, April 7, 2015 8:44 AM

To: T Birmingham (tbirmingham@westlandswater.org); 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; 'Catherine Karen'; 'Dan Pope'; 'Darlene Knauf'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Doug Subers'; 'Ed Manning'; 'Erick Mullen'; 'Gayle Holman'; 'Jason Peltier'; 'Jim Watson'; 'Joe Findaro'; 'Mike Burns'; 'Sheila Greene'; 'Susan Ramos'

Subject: Politico

Carly Fiorina blames environmentalists for California drought

By [Kendall Breitman](#)

4/6/15 5:46 PM EDT

Carly Fiorina is blaming liberal environmentalists for what she calls a “man-made” drought in California. “It is a man-made disaster,” Fiorina, who is “seriously considering” a run for president in 2016, [told](#) the Blaze Radio on Monday.

“California is a classic case of liberals being willing to sacrifice other people’s lives and livelihoods at the altar of their ideology. It’s a tragedy.”

The former Hewlett-Packard CEO, a Republican, ran for a California Senate seat in 2010 against incumbent Democrat Barbara Boxer and lost. Now, the state is facing a [devastating](#) drought in its fourth year. On Wednesday, California Gov. Jerry Brown [issued](#) an executive order to restrict water usage. The directive orders California’s State Water Resources Control Board — which supplies 90 percent of Californians with water, according to The New York Times — to reduce its supply by 25 percent.

Republicans have blamed California’s protections for endangered species for the drought. In December, the House [passed](#) a bill to pump water from the Sacramento-San Joaquin Delta to Southern California, a move that environmentalists said would harm endangered fish species. The Obama administration threatened to veto the bill.

“That’s the tragedy of California, because of liberal environmentalists’ insistence — despite the fact that California has suffered from droughts for millennia, liberal environmentalists have prevented the building of a single new reservoir or a single new water conveyance system over decades during a period in which California’s population has doubled,” Fiorina said.

“There is a man-made lack of water in California — and Washington manages the water for the farmers,” she added.

When asked about the drought on Monday, White House press secretary Josh Earnest said the Obama administration does not have any policy changes to share, and he listed steps that President Barack Obama has taken to offer relief to the state, such as sending \$60 million to California food banks and \$15 million for farmers and ranchers.

“We’re going to continue to be in touch with California,” Earnest said at the daily press briefing.

Fiorina describes Obama’s assistance to Californians a little differently.

“President Obama goes out to California a little over a year ago, calls it a tragedy of global warming and hands out money to a food bank,” she said. “This is all about politics and policy, and it is liberal environmentalists who have brought us this tragedy.”

Read more: <http://www.politico.com/story/2015/04/carly-fiorina-california-drought-116711.html#ixzz3WdeLyb8b>

From: Michael Burns

Sent: Tuesday, April 7, 2015 10:56 AM

To: Jason Peltier; Gayle Holman; Ed Manning; Carolyn Jensen

Subject: RE: NY Times -- See Response by Dan Keppen -- good to get a response to the assault but unfortunately we are on the defensive rather than attacking the problem -- failed water system

The New York Times

The Opinion Pages

ROOM *for* DEBATE

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Stop Water Abuse by the Almond and Pistachio Empire



Wenonah Hauter is the executive director of [Food & Water Watch](#), a national advocacy group, and the author of "[Foodopoly](#): The Battle Over the Future of Food and Farming in America." She is on [Twitter](#).

UPDATED APRIL 7, 2015, 6:46 AM

In light of the fact that agriculture accounts for some 80 percent of California's water use, Gov. Jerry Brown should impose sensible restrictions on irrigation in extremely dry areas of the state that cannot sustain agricultural production without taxing the state's dwindling water supply.

Gov. Jerry Brown should impose sensible restrictions on irrigation in extremely dry areas of the state that cannot sustain agricultural production.

He should begin by addressing the egregious water abuse by the almond and pistachio empire in the desert-like west side of the San Joaquin Valley. Historically, agribusiness has grown almonds in wetter parts of California, but rising global demand has spurred growers to plant almond and pistachio trees galore on the dry and salty soils of the west side. Most of these nuts are exported overseas to markets such as China.

These operations consume vast amounts of water, importing it from the San Francisco Bay Delta and rapidly depleting groundwater. The Westlands Water District, the largest irrigation district in California and home to rampant almond production, has pumped over one million acre-feet of groundwater in the past two years – more water than Los Angeles, San Diego and San Francisco use in a year combined.

Governor Brown and the State Water Board must exercise their constitutional authority to regulate all of California's waters to eliminate this wasteful and unreasonable use. In the short term, the governor

should mandate sensible limits on groundwater pumping. And in the long term, the state should stop the irrigation of selenium-laced soils on the west side. Farmers who were given false hope of water should be compensated for their losses.

Finally, Governor Brown and the Water Board need to balance California's over-allocated water rights. The state has long promised more water than it can actually deliver, resulting in overplanting. It's time to bring California's agricultural system in harmony with its real water supply.

- Recommend

Can Farms Survive Without Drying Up California?

How to limit the agricultural use of water in the state as the West faces a drier future because of global warming. [Read More »](#)

DEBATERS

- Better Water Management and Pricing Policies



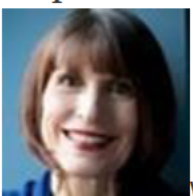
HEATHER COOLEY, PACIFIC INSTITUTE

- California Farmers Have Suffered Enough



DAN KEPPEL, FAMILY FARM ALLIANCE

- Stop Water Abuse by the Almond and Pistachio Empire



WENONAH HAUTER, FOOD & WATER WATCH

- De-Californify the Nation's Produce Supply



TOM PHILPOTT, MOTHER JONES MAGAZINE

- Speed Up Groundwater Conservation



REBECCA NELSON, FELLOW, STANFORD WOODS INSTITUTE FOR THE ENVIRONMENT

- Borrow Some Techniques From Organic Farming



JONATHAN FOLEY, ENVIRONMENTAL SCIENTIST

- Modernize Irrigation With Incentives



ROBERT GLENNON, AUTHOR, "UNQUENCHABLE"

Stop Water Abuse by the Almond and Pistachio Empire



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Join [Opinion on Facebook](#) and follow updates on twitter.com/roomfordebate.

From: Michael Burns
Sent: Tuesday, April 07, 2015 9:36 AM
To: Jason Peltier; Gayle Holman; Ed Manning; Carolyn Jensen
Subject: RE: Politico

Even more effective, hire a camera crew and have Mike Wade or someone interview a farmer at a location where the water is flowing out to the ocean to demonstrate that the problem is the water system not the water used by farmers. There are national news stories on the drought everyday but the ag messages are not getting out.

From: Michael Burns
Sent: Tuesday, April 07, 2015 9:14 AM
To: Jason Peltier; Gayle Holman; Ed Manning; Carolyn Jensen
Subject: RE: Politico

Someone from the Ag community should submit an oped today explaining that most of today's drenching will not be captured and illustrate why the 80% number is a mischaracterization.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Jason Peltier <jpeltier@westlandswater.org>
Date: 04/07/2015 8:43 AM (GMT-08:00)
To: "T Birmingham (tbirmingham@westlandswater.org)" <tbirmingham@westlandswater.org>, Alison MacLeod <amacleod@ka-pow.com>, Carmela McHenry <cmchenry@ka-pow.com>, Carolyn Jensen <cjensen@ka-pow.com>, 'Catherine Karen' <ckaren@sidley.com>, 'Dan Pope' <dpope@westlandswater.org>, 'Darlene Knauf' <dknauf@foley.com>, 'David Bernhardt' <dbernhardt@BHFS.com>, 'Dennis Cardoza' <dcardoza@foley.com>, 'Denny Rehberg' <drehberg@mercuryllc.com>, Doug Subers <dsubers@ka-pow.com>, Ed Manning <emanning@ka-pow.com>, 'Erick Mullen' <emullen@mercuryllc.com>, 'Gayle Holman' <gholman@westlandswater.org>, 'Jason Peltier' <jpeltier@westlandswater.org>, 'Jim Watson' <jwatson@westlandswater.org>, 'Joe Findaro' <joe.findaro@akerman.com>, Michael Burns <mburns@ka-pow.com>, 'Sheila Greene' <sgreene@westlandswater.org>, 'Susan Ramos' <sramos@westlandswater.org>
Subject: Politico

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4/6/15 5:46 PM EDT

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From: UberConference

Sent: Thursday, April 9, 2015 1:13 PM

To: gholman@westlandswater.org

Subject: Conference Invite from Cannon Michael: Water PR Call on Thursday April 16, 2015 @ 3:00 pm (PDT)

Attachments: invite.ics



Cannon Michael has invited you to a conference call:

Water PR Call

April 16, 2015 at 3:00PM (PDT)

Ways to Join

Go to: <https://www.uberconference.com/waterpr> or just call 877-████-████ and use PIN 80918.

Alternate #: 209-████-████

Invited Participants

Tom Barcellos, Wendy Fink-Weber, Erik Hansen, Sarah Woolf, Nancy Williams, Mike Wade, Dan Keppen, Jeff Janas, Tony Azevedo, David Bernhardt, Jon Reiter, Clare Foley, Steve Chedester, Mike Henry, Tom Birmingham, Maria Gutierrez, Gayle Holman, Paul Adams, Sean Geivet, Brent Walthall, Ara Azhderian, Loren Booth, Dominic DiMare, Melissa Poole, Ronald Jacobsma, Mario Santoyo, Cannon Michael, Chris White, Daniel Errotabere, Kimberly Brown, James Nickel, Kent Stephens, Dennis Cardoza, Joe Raeder, Dave Puglia, Chris Hurd, Aubrey Bettencourt, Roger Isom, Jennifer T. Buckman, Martin McIntyre, Gawwhitefresno@comcast.net, William Bourdeau, Chase Hurley, Louie Brown, Mark Watte, Dennis Falaschi, Shawn Coburn, Dan Nelson, Joel Nelsen, Dennis Nuxoll

Tip: Google Docs add-on

Get to the point quickly by adding the UberConference add-on sidebar to your Google Docs.

[LEARN MORE](#)



Add to my calendar:

[Google](#) | [Outlook](#) | [iCal](#) | [Yahoo](#)

Joining from outside the US?

[International access numbers](#)

UberConference

If you'd like to stop getting reminder emails from UberConference, contact Cannon Michael, the organizer.

From: Noles, Holly A.
Sent: Friday, April 10, 2015 9:47 AM
To: 'kclark@westlandswater.org'
Subject: Teleconference

Hello Ms. Clark,

David Bernhardt would like to participate in Tuesday's 9AM teleconference call. Can you please give me the call information so I can work with our IT guy to set up our end? Thank you in advance for your help.

Respectfully,

Holly Noles

Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

202.652.2352 tel

HNOLES@bhfs.com

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From: Karen Clark
Sent: Saturday, April 11, 2015 9:25 AM
To: 'Noles, Holly A.'; David L. Bernhardt
CC: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams
Subject: RE: Teleconference

Importance: High

Hello Holly and David,

I am so very sorry for responding to you so late. I had a number of fires to put out on Friday and am just catching up with my email this Saturday morning. We will have a participant (Phil Williams in our Sacramento office) who will be participating via video conference as well as David via video conference. I've cc'd our I.T. people Jim Carter and Jas Singh to let them know that we will have participants from Brownstein Hyatt and our Sacramento office participating in the video conference on Monday, April 13 at 9:00 a.m. They will help set up the video conference with both parties. I'm thinking that it would be best to test everything out at 8:30 a.m. so that we can make sure everything is running smoothly by the time the meeting starts. If you need to reach me by telephone, please don't hesitate to contact me (even over the weekend) on my cell at [REDACTED]

I hope both of you are enjoying your weekend.

Sincerely,

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Noles, Holly A. [mailto:HNOLES@bhfs.com]
Sent: Friday, April 10, 2015 9:47 AM
To: 'kclark@westlandswater.org'
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From: Noles, Holly A.
Sent: Saturday, April 11, 2015 11:53 AM
To: Karen Clark
Subject: Re: Teleconference

Thanks Karen!

On Apr 11, 2015, at 12:24 PM, Karen Clark <kclark@westlandswater.org> wrote:

Hello Holly and David,

I am so very sorry for responding to you so late. I had a number of fires to put out on Friday and am just catching up with my email this Saturday morning. We will have a participant (Phil Williams in our Sacramento office) who will be participating via video conference as well as David via video conference. I've cc'd our I.T. people Jim Carter and Jas Singh to let them know that we will have participants from Brownstein Hyatt and our Sacramento office participating in the video conference on Monday, April 13 at 9:00 a.m. They will help set up the video conference with both parties. I'm thinking that it would be best to test everything out at 8:30 a.m. so that we can make sure everything is running smoothly by the time the meeting starts. If you need to reach me by telephone, please don't hesitate to contact me (even over the weekend) on my cell at [REDACTED]

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Email: kclark@westlandswater.org

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To: 'kclark@westlandswater.org'
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From: Jason Peltier

Sent: Saturday, April 11, 2015 8:43 PM

To: Tom Birmingham; Dan Nelson <Dan.Nelson@sldmwa.org>

CC: Craig Manson; Philip Williams; Sue Ramos; James Watson; Ara Azhderian; Jon Rubin; Gayle Holman; Ed Manning; Carolyn Jensen; Michael Burns; Dennis Cardoza; Joe Findaro; David Bernhardt

Subject: Mobile Web - News - Delta tunnels: Major changes to environmental restoration could endanger Brown's water plan

<http://www.santacruzsentinel.com//environment-and-nature/20150411/delta-tunnels-major-changes-to-environmental-restoration-could-endanger-browns-water-plan>

From: Noles, Holly A.
Sent: Monday, April 13, 2015 7:48 AM
To: 'Karen Clark'
CC: 'Jim Carter'; jsingh@westlandswater.org; Goo, Benjamin M.
Subject: RE: Teleconference

Thank you for your help, Karen.

Jim and Jas- I am looping in Brownstein's IT, Mr. Ben Goo, to the conversation as he will be assisting on our end.

Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

202.652.2352 tel

HNOLES@bhfs.com

From: Karen Clark [mailto:kclark@westlandswater.org]
Sent: Saturday, April 11, 2015 12:25 PM
To: Noles, Holly A.; Bernhardt, David L.
Cc: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams
Subject: RE: Teleconference
Importance: High

Hello Holly and David,

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Sincerely,

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

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From: Jim Carter
Sent: Monday, April 13, 2015 7:53 AM
To: Jose Gutierrez
Subject: Fwd: Teleconference

FYI,

--

Jim Carter, jcarter@westlandswater.org
Tel: (559) 241-6243 Mobile: (559) [REDACTED]
Westlands Water District

--

Noles, Holly A. <HNOLES@bhfs.com> , 4/13/2015 7:47 AM:
Thank you for your help, Karen.

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Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

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From: Karen Clark [mailto:kclark@westlandswater.org]
Sent: Saturday, April 11, 2015 12:25 PM
To: Noles, Holly A.; Bernhardt, David L.
Cc: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams
Subject: RE: Teleconference
Importance: High

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From: Goo, Benjamin M.
Sent: Monday, April 13, 2015 8:50 AM
To: 'Jim Carter'; jsingh@westlandswater.org
CC: Noles, Holly A.; 'Karen Clark'
Subject: RE: Teleconference

Good Afternoon Jim / Jas,

I would really like to test this today before we go live tomorrow. We have an older Polycom IP based system here. The IP Address for our video conference unit is [REDACTED]. Please let me know when your units are available for testing so that we can do a dry run. I don't know if our bridge will support a 3 way call but perhaps we can dial into yours?

If you have any issues or need further information please don't hesitate to reach out. I look forward to hearing back from you soon.

Best Wishes,

Benjamin M. Goo
Office Services/IT Coordinator
Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, DC 20005
202.747.0515 tel
BGoo@BHFS.com

From: Noles, Holly A.
Sent: Monday, April 13, 2015 10:48 AM
To: 'Karen Clark'
Cc: 'Jim Carter'; jsingh@westlandswater.org; Goo, Benjamin M.
Subject: RE: Teleconference
Importance: High

Thank you for your help, Karen.

Jim and Jas- I am looping in Brownstein's IT, Mr. Ben Goo, to the conversation as he will be assisting on our end.

Holly A. Noles
Executive Assistant
Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, DC 20005
202.652.2352 tel
HNOLES@bhfs.com

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Sent: Saturday, April 11, 2015 12:25 PM
To: Noles, Holly A.; Bernhardt, David L.
Cc: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams
Subject: RE: Teleconference
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Sent: Monday, April 13, 2015 11:00 AM
To: Goo, Benjamin M.
CC: Noles, Holly A.; 'Karen Clark'; jsingh@westlandswater.org
Subject: Re: Teleconference

Benjamin Goo,

> ... dry run ...

I would like to perform a test call later today. Our system is currently in use until afternoon pacific time. I can let you know when it will be available. Our unit is available at [REDACTED]

> ... 3 way call ...

Our system can support 3 way call.

--

Jim Carter, jcarter@westlandswater.org
Tel: (559) 241-6243 Mobile: (559) [REDACTED]-[REDACTED]
Westlands Water District

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Sent: Saturday, April 11, 2015 12:25 PM

To: Noles, Holly A.; Bernhardt, David L.

Cc: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams

Subject: RE: Teleconference

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From: Goo, Benjamin M.
Sent: Monday, April 13, 2015 11:22 AM
To: 'Jim Carter'
Subject: RE: Teleconference

Hey Jim,

Does either {4PM EDT / 1 PM PDT} or [5:30 EDT / 2:30 PDT] work for you?

-bg

From: Jim Carter [mailto:jcarter@westlandswater.org]
Sent: Monday, April 13, 2015 2:00 PM
To: Goo, Benjamin M.
Cc: Noles, Holly A.; 'Karen Clark'; jsingh@westlandswater.org
Subject: Re: Teleconference
Importance: High

Benjamin Goo,

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> ... 3 way call ...

Our system can support 3 way call.

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Jim Carter, jcarter@westlandswater.org

Tel: (559) 241-6243 Mobile: (559) [REDACTED]

Westlands Water District

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Cc: 'Jim Carter'; jsingh@westlandswater.org; Goo, Benjamin M.
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Email: kclark@westlandswater.org

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From: Jim Carter
Sent: Monday, April 13, 2015 11:46 AM
To: Goo, Benjamin M.
CC: Jasdeep Singh; Rose Schlueter
Subject: Re: Teleconference

Benjamin,

Lets try 5:30PM EDT/2:30PM PDT for the test call.

In case we have issues, Jas' cell phone is 559-██████████. We will attempt to call you, and the Sacramento office at that time.

--

Jim Carter, jcarter@westlandswater.org
Tel: (559) 241-6243 Mobile: (559) ██████████
Westlands Water District

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Importance: High

Benjamin Goo,

> ... dry run ...

I would like to perform a test call later today. Our system is currently in use until afternoon pacific time. I can let you know when it will be available. Our unit is available at ██████████

> ... 3 way call ...

Our system can support 3 way call.

--

Jim Carter, jcarter@westlandswater.org
Tel: (559) 241-6243 Mobile: (559) ██████████
Westlands Water District

--

Goo, Benjamin M. <BGoo@BHFS.com> , 4/13/2015 8:50 AM:
Good Afternoon Jim / Jas,

I would really like to test this today before we go live tomorrow. We have an older Polycom IP based system here. The IP Address for our video conference unit is [REDACTED]. Please let me know when your units are available for testing so that we can do a dry run. I don't know if our bridge will support a 3 way call but perhaps we can dial into yours?

If you have any issues or need further information please don't hesitate to reach out. I look forward to hearing back from you soon.

Best Wishes,

Benjamin M. Goo
Office Services/IT Coordinator
Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, DC 20005
202.747.0515 tel
BGoo@BHFS.com

From: Noles, Holly A.
Sent: Monday, April 13, 2015 10:48 AM
To: 'Karen Clark'
Cc: 'Jim Carter'; jsingh@westlandswater.org; Goo, Benjamin M.
Subject: RE: Teleconference
Importance: High

Thank you for your help, Karen.

Jim and Jas- I am looping in Brownstein's IT, Mr. Ben Goo, to the conversation as he will be assisting on our end.

Holly A. Noles
Executive Assistant
Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, DC 20005
202.652.2352 tel
HNOLES@bhfs.com

From: Karen Clark [<mailto:kclark@westlandswater.org>]
Sent: Saturday, April 11, 2015 12:25 PM
To: Noles, Holly A.; Bernhardt, David L.
Cc: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams
Subject: RE: Teleconference
Importance: High

Hello Holly and David,

I am so very sorry for responding to you so late. I had a number of fires to put out on Friday and am just catching up with my email this Saturday morning. We will have a participant (Phil Williams in our Sacramento office) who will be participating via video conference as well as David via video conference. I've cc'd our I.T. people Jim Carter and Jas Singh to let them know that we will have participants from Brownstein Hyatt and our Sacramento office participating in the video conference on Monday, April 13 at 9:00 a.m. They will help set up the video conference with both parties. I'm thinking that it would be best to test everything out at 8:30 a.m. so that we can make sure everything is running smoothly by the time the meeting starts. If you need to reach me by telephone, please don't hesitate to contact me (even over the weekend) on my cell at [REDACTED]

I hope both of you are enjoying your weekend.

Sincerely,

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Noles, Holly A. [<mailto:HNOLES@bhfs.com>]

Sent: Friday, April 10, 2015 9:47 AM

To: 'kclark@westlandswater.org'

Subject: Teleconference

Hello Ms. Clark,

David Bernhardt would like to participate in Tuesday's 9AM teleconference call. Can you please give me the call information so I can work with our IT guy to set up our end? Thank you in advance for your help.

Respectfully,

Holly Noles

Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

202.652.2352 tel

HNOLES@bhfs.com

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From: Goo, Benjamin M.
Sent: Monday, April 13, 2015 12:00 PM
To: Jim Carter
CC: Jasdeep Singh
Subject: Re: Teleconference

Sounds like a plan, I look forward to seeing you soon.

-bg

Please excuse any typos or brevity; sent from my mobile device.

On Mon, Apr 13, 2015 at 11:46 AM -0700, "Jim Carter" <jcarter@westlandswater.org> wrote:

Benjamin,

Lets try 5:30PM EDT/2:30PM PDT for the test call.

In case we have issues, Jas' cell phone is 559-██████████. We will attempt to call you, and the Sacramento office at that time.

--

Jim Carter, jcarter@westlandswater.org
Tel: (559) 241-6243 Mobile: (559) ██████████
Westlands Water District

--

Goo, Benjamin M. <BGoo@BHFS.com> , 4/13/2015 11:22 AM:

Hey Jim,

Does either {4PM EDT / 1 PM PDT} or [5:30 EDT / 2:30 PDT] work for you?

-bg

From: Jim Carter [mailto:jcarter@westlandswater.org]
Sent: Monday, April 13, 2015 2:00 PM
To: Goo, Benjamin M.
Cc: Noles, Holly A.; 'Karen Clark'; jsingh@westlandswater.org
Subject: Re: Teleconference
Importance: High

Benjamin Goo,

> ... dry run ...

I would like to perform a test call later today. Our system is currently in use until afternoon pacific time. I can let you know when it will be available. Our unit is available at ██████████

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Our system can support 3 way call.

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Jim Carter, jcarter@westlandswater.org

Tel: (559) 241-6243 Mobile: (559) [REDACTED]

Westlands Water District

--

Goo, Benjamin M. <BGoo@BHFS.com> , 4/13/2015 8:50 AM:

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I would really like to test this today before we go live tomorrow. We have an older Polycom IP based system here. The IP Address for our video conference unit is [REDACTED]. Please let me know when your units are available for testing so that we can do a dry run. I don't know if our bridge will support a 3 way call but perhaps we can dial into yours?

If you have any issues or need further information please don't hesitate to reach out. I look forward to hearing back from you soon.

Best Wishes,

Benjamin M. Goo

Office Services/IT Coordinator

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

202.747.0515 tel

BGoo@BHFS.com

From: Noles, Holly A.

Sent: Monday, April 13, 2015 10:48 AM

To: 'Karen Clark'

Cc: 'Jim Carter'; jsingh@westlandswater.org; Goo, Benjamin M.

Subject: RE: Teleconference

Importance: High

Thank you for your help, Karen.

Jim and Jas- I am looping in Brownstein's IT, Mr. Ben Goo, to the conversation as he will be assisting on our end.

Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

202.652.2352 tel

HNOLES@bhfs.com

From: Karen Clark [<mailto:kclark@westlandswater.org>]

Sent: Saturday, April 11, 2015 12:25 PM

To: Noles, Holly A.; Bernhardt, David L.

Cc: 'Jim Carter'; Dan Pope; jsingh@westlandswater.org; Philip Williams

Subject: RE: Teleconference

Importance: High

Hello Holly and David,

I am so very sorry for responding to you so late. I had a number of fires to put out on Friday and am just catching up with my email this Saturday morning. We will have a participant (Phil Williams in our Sacramento office) who will be participating via video conference as well as David via video conference. I've cc'd our I.T. people Jim Carter and Jas Singh to let them know that we will have participants from Brownstein Hyatt and our Sacramento office participating in the video conference on Monday, April 13 at 9:00 a.m. They will help set up the video conference with both parties. I'm thinking that it would be best to test everything out at 8:30 a.m. so that we can make sure everything is running smoothly by the time the meeting starts. If you need to reach me by telephone, please don't hesitate to contact me (even over the weekend) on my cell at [REDACTED]

I hope both of you are enjoying your weekend.

Sincerely,

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Noles, Holly A. [<mailto:HNOLES@bhfs.com>]

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To: 'kclark@westlandswater.org'

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David Bernhardt would like to participate in Tuesday's 9AM teleconference call. Can you please give me the call information so I can work with our IT guy to set up our end? Thank you in advance for your help.

Respectfully,

Holly Noles

Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

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HNOLES@bhfs.com

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reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Tom Birmingham
Sent: Saturday, April 18, 2015 11:24 AM
To: 'Bernhardt, David L.'
Subject: FW: Revised Section 303
Attachments: Revised Section 303.docx

FYI

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Saturday, April 18, 2015 10:35 AM
To: 'Watts, John (Feinstein)'
Subject: Revised Section 303

John,

Attached is my attempt to revise section 303. I am not sending it to Gibson, but if you're comfortable with the language please send it to him. Call if you have any questions.

Tom

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

~~(a) With respect to the~~In implementing ~~ation of~~ the provisions of this Act, the Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to comply in compliance with legal obligations imposed pursuant to or as a result of this Act or other applicable Federal law, including ~~such actions related to the implementation of this Act that are needed~~taken to comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), ~~and other applicable Federal and State laws~~, shall not --

- (1) result in ~~the involuntary reductions~~ of water supply ~~impacts to for~~ individuals or districts who receive water from either the State Water Project or the United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refuge service or water supply contracts; or
- (2) cause redirected adverse water supply impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;

~~(b) Provided, however, that that n~~Nothing in this Act is intended herein shall to modify (i) the existing terms, rights, or obligations ~~or limitations in of~~ any Central Valley Project water service contract, repayment contracts, ~~including refuge water supply~~water supply contracts, Sacramento River Settlement ~~C~~contracts, San Joaquin River ~~E~~exchange ~~C~~contract; ~~s or~~ (ii) the existing terms, rights, or obligations of any State Water Project contract; ~~s or~~ (iii) any judicial judgment, opinion, or decree regarding the terms, obligations, or limitations of such contracts.

From: Tom Birmingham
Sent: Monday, April 20, 2015 4:52 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Second Revision to 303
Attachments: Second Revision to 303.docx

John,

Attached is the revised language of Section 303, which I modified to reflect our discussion today. I may not have heard it correctly, but I understood that everyone on the call was okay with deleting subsection (b). Therefore, I deleted that subsection, and it would appear that its deletion eliminates the conflict between the refuges and Friant.

Tom

SEC. 303. NO REDIRECTED ADVERSE IMPACTS.

(a) ~~In implementing the provisions of this Act, t~~The Secretary of the Interior and the Secretary of Commerce shall ensure that actions taken to implement ~~comply with legal obligations imposed pursuant to or as a result of this Act or other applicable Federal law, including actions taken to comply with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),~~ shall not

~~(1) result in involuntary reductions of water supply for individuals or districts who receive water from either the State Water Project or the~~ Central Valley Project or water purveyors organized under California law that do not receive water from the State Water Project or the Central Valley Project. ~~United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refuge service or water supply contracts; or~~
~~(2) cause redirected adverse water supply impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;~~

~~(b) Nothing in this Act is intended to modify (i) the existing terms, rights, or obligations of any Central Valley Project water service contract, repayment contract, refuge water supply contract, Sacramento River Settlement contract, San Joaquin River exchange contract; (ii) the existing terms, rights, or obligations of any State Water Project contract; or (iii) any judicial judgment, opinion, or decree regarding the terms, obligations, or limitations of such contracts.~~

From: Tom Birmingham
Sent: Tuesday, April 21, 2015 8:58 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Second Revision to 303
Attachments: Second Revision to 303.docx

John,

Here is a more concise version of the language I sent yesterday. As we discussed this morning, please distribute this version.

Tom

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Monday, April 20, 2015 4:52 PM
To: 'Watts, John (Feinstein)'
Cc: 'Bernhardt, David L.'
Subject: Second Revision to 303

John,

Attached is the revised language of Section 303, which I modified to reflect our discussion today. I may not have heard it correctly, but I understood that everyone on the call was okay with deleting subsection (b). Therefore, I deleted that subsection, and it would appear that its deletion eliminates the conflict between the refuges and Friant.

Tom

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~~(1) result in involuntary reductions of water supply for individuals or districts who receive water from either the State Water Project or the~~ Central Valley Project or water purveyors organized under California law that receive water from other sources. ~~United States under water rights settlement contracts, exchange contracts, water service contracts, repayment contracts, refuge service or water supply contracts; or~~

~~(2) cause redirected adverse water supply impacts to those within the Sacramento River watershed, the San Joaquin River watershed or the State Water Project service area;~~

(b) ~~Nothing in this Act is intended to modify (i) the existing terms, rights, or obligations of any Central Valley Project water service contract, repayment contract, refuge water supply contract, Sacramento River Settlement contract, San Joaquin River exchange contract; (ii) the existing terms, rights, or obligations of any State Water Project contract; or (iii) any judicial judgment, opinion, or decree regarding the terms, obligations, or limitations of such contracts.~~

From: Tom Birmingham

Sent: Wednesday, April 22, 2015 9:04 AM

To: 'Watts, John (Feinstein)'; 'Bernhardt, David L.'

Subject: RE: Request for call today to discuss confidential revised draft language for your review

I am available anytime between 11:00 a.m. and 1:00 p.m. for a call.

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Wednesday, April 22, 2015 7:09 AM

To: 'tbirmingham@westlandswater.org'; Bernhardt, David L.

Subject: Request for call today to discuss confidential revised draft language for your review

Tom and David,

I have attached some potential changes to the draft bill in redline, and would like to set up a time to talk to you today to discuss two changes requested by Tom Gibson:

- 1) Request to change the standard of "Consistent with avoiding additional adverse effects upon listed fish species beyond the range of those authorized under the Endangered Species Act" to strike "Endangered Species Act" and replace it with "smelt and salmonid biological opinions".
- 2) A request to reduce reliance on emergency consultation under section 106. Tom believes this can be done without changing the applicable standard mentioned in paragraph (1) above. Based on this general request, I have drafted a number of potential changes to section 106 which I would like to take you through on the call.

I have also included a few more minor formatting or technical changes in the attached draft.

I am available today before 1230 edt, between 130 and 330 edt, and between 4 and 5 edt. I could also talk after our water rights call, perhaps at about 6 edt.

From: Bernhardt, David L.
Sent: Wednesday, April 22, 2015 9:15 AM
To: 'Watts, John (Feinstein)'; Tom Birmingham
Subject: RE: Request for call today to discuss confidential revised draft language for your review

John and Tom: Here is a call in number: [REDACTED] code [REDACTED]

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Wednesday, April 22, 2015 12:07 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: RE: Request for call today to discuss confidential revised draft language for your review

Great – let's talk at 2 pm eastern time, 11 am pacific time. I will call each of you then, unless someone wants to set up a conference line.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Wednesday, April 22, 2015 12:04 PM
To: Watts, John (Feinstein); 'Bernhardt, David L.'
Subject: RE: Request for call today to discuss confidential revised draft language for your review

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From: Tom Birmingham
Sent: Wednesday, April 22, 2015 9:23 AM
To: 'Bernhardt, David L.'; 'Watts, John (Feinstein)'
Subject: RE: Request for call today to discuss confidential revised draft language for your review

Got it.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Wednesday, April 22, 2015 9:15 AM
To: 'Watts, John (Feinstein)'; Tom Birmingham
Subject: RE: Request for call today to discuss confidential revised draft language for your review

John and Tom: Here is a call in number: [REDACTED] code [REDACTED]

From: Watts, John (Feinstein) [mailto:John.Watts@feinstein.senate.gov]
Sent: Wednesday, April 22, 2015 12:07 PM
To: Tom Birmingham; Bernhardt, David L.
Subject: RE: Request for call today to discuss confidential revised draft language for your review

Great – let's talk at 2 pm eastern time, 11 am pacific time. I will call each of you then, unless someone wants to set up a conference line.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Wednesday, April 22, 2015 12:04 PM
To: Watts, John (Feinstein); 'Bernhardt, David L.'
Subject: RE: Request for call today to discuss confidential revised draft language for your review

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To: 'tbirmingham@westlandswater.org'; Bernhardt, David L.
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From: Tom Birmingham
Sent: Thursday, April 23, 2015 4:35 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'; 'Dan Dooley'
Subject: Legislation

John,

In anticipation of our call tomorrow at 1:00 p.m. PDT, can you circulate to the participants the latest draft of the legislation? I think it would be good to provide Dan an opportunity to review the bill prior to our discussion.

Thank you,
Tom

From: Tom Birmingham
Sent: Friday, April 24, 2015 8:44 AM
To: 'Tal Eslick'
CC: 'Bernhardt, David L.'
Subject: Potential Language for House Legislation

Tal,

At Devin Nunes' request, I drafted the following:

Operations of the Central Valley Project and the California State Water Project in conformity with California State Water Resources Control Decision 1641 shall satisfy any duty or obligation imposed on the Secretary, the Bureau of Reclamation, or the California Department of Water Resources under the Endangered Species Act, of 1973 (16 U.S.C. 1536).

Please telephone me so that we can discuss the language.

Thank you,

Tom

From: Butler, Jessica

Sent: Wednesday, April 29, 2015 12:35 PM

To: Tom Birmingham (tbirmingham@westlandswater.org); David L. Bernhardt (dbernhardt@bhfs.com)

Subject: possible amendment on purchasing water

Importance: High

I'm assuming Ducks will go ape over this. Let me know your thoughts on who/how everyone will react. Obviously, this is McClintock

At the appropriate place in the bill, insert the following:

SEC. II. None of the funds made available by this Act may be used to purchase water to supplement flow requirements mandated under the Endangered Species Act of 1973, the Central Valley Project Improvement Act, or the National Environmental Policy Act of 1969, in a river basin that the U.S. Drought Monitor categorizes as D2 (severe Drought), D3 (Extreme Drought), or D4 (Exceptional Drought) conditions.

From: Bernhardt, David L.
Sent: Wednesday, April 29, 2015 5:53 PM
To: Thomas W. (Tom) Birmingham Esq.
Subject: Fwd: possible amendment on purchasing water

Tom: I spoke to Jessica this afternoon, so I don't think you need to follow up unless you want to.

[REDACTED]

Begin forwarded message:

From: "Butler, Jessica" <Jessica.Butler@mail.house.gov>
Date: April 29, 2015 at 3:34:58 PM EDT
To: "Tom Birmingham (tbirmingham@westlandswater.org)" <tbirmingham@westlandswater.org>, "David L. Bernhardt (dbernhardt@bhfs.com)" <dbernhardt@bhfs.com>
Subject: possible amendment on purchasing water

I'm assuming Ducks will go ape over this. Let me know your thoughts on who/how everyone will react. Obviously, this is McClintock

At the appropriate place in the bill, insert the following:

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From: Jason Peltier
Sent: Thursday, April 30, 2015 9:47 PM
To: David Bernhardt
Subject: Fwd: potential E&W approps language concerns

Begin forwarded message:

From: Ara Azhderian <ara.azhderian@sldmwa.org>
Date: April 30, 2015 at 9:11:07 PM PDT
To: Kyle Lombardi <Kyle.Lombardi@mail.house.gov>, Alexandra Berenter <Alexandra.Berenter@mail.house.gov>, Jessica Butler <Jessica.butler@mail.house.gov>, Caitlin Shannon <Caitlin.Shannon@mail.house.gov>
Cc: Dan Nelson <dan.nelson@sldmwa.org>, "Tom Birmingham (Office)" <tbirmingham@westlandswater.org>, Steven Chedester <schedester@sjrecwa.net>, Jennifer Buckman <jbuckman@friantwater.org>, Brent Walthall <bwalthall@kcwa.com>
Subject: potential E&W approps language concerns

Hello Kyle, Alexandra, Jessica, and Caitlin,

Throughout the day there has been much discussion about a proposed amendment by Congressman McClintock to the E&W approps budget. My understanding is the Congressman's aim is to achieve two purposes: 1) hold the federal agencies more accountable about how they buy and use water for fisheries management purposes, and 2) ensure that any resources, financial or natural, beyond the those necessary to meet minimum environmental objectives during the drought, be dedicated to people. These are two laudable ambitions.

The proposed language we have seen throughout the day however focuses more on prohibiting the federal government's acquisition of water for environmental purpose rather than focusing on the stated goals. I do not claim to understand the intricacies of Congressional parliamentary rules, so perhaps this approach is the only viable path forward, however, constituents of the San Luis & Delta-Mendota Water Authority do have concerns with the current approach.

First, the prohibition language will be in effect next year, not this, and we do not know what hydrologic conditions at that time will be. In looking back at prior instances, it is hard to recall occasions when Reclamation's acquisitions have disrupted the transfer market or resulted in a negative consequence for south-of-Delta CVP water users. On the contrary, we believe we have benefited.

Second, as a fundamental principle, we support the federal government's acquisition of water from willing sellers to serve public interests, including environmental management, as opposed to the disproportionate takings we have experienced over the last 20+ years. Because we have chronically experienced such takings, we deeply appreciate the accountability goal of the Congressman's aim, but fail to see at this time how that is realized in its various forms of language.

Lastly, we are concerned about how the prohibition language might be interpreted as it relates to the federal government's commitment to pursue mitigation for the cost of CVP water and power takings related to releases from Trinity Reservoir for flow augmentation on the lower Klamath River. Trinity Reservoir is part of the CVP, while the lower Klamath River is outside the CVP's place of use. Furthermore, past actions have been taken to benefit unlisted salmonids purportedly experiencing

environmental effects that are completely unrelated to CVP operations. Given the likelihood of a repeated call for CVP Trinity water next year (and this!) to meet unrelated lower Klamath concerns, loss mitigation is warranted, and proposed amendment language could be interpreted as an impediment.

In closing, we do not want to create a divide in the Central Valley; now is the time to stand together, not apart, and we support the goals expressed by the Congressman's staff. We are, rather, expressing our concern with how various approaches toward achieving these goals have been drafted, and of the unintended, potentially adverse, impacts that may result. Language that focuses on the need for federal agencies to account for how much water they purchase, at what cost, and to quantify what has been achieved by the action; and/or language that directs appropriated funds toward maximizing water supply for people in the context of drought are all aims we could support and are willing to work towards. I regret any complications to your efforts this communication brings, but I thought it important you be aware of the concerns of many CVP contractors south-of-the-Delta. As always, we stand ready to provide whatever support we can and remain deeply appreciative of your collective efforts to improve this otherwise terrible situation.

Thanks,
ara

From: Gayle Holman
Sent: Friday, May 1, 2015 2:48 PM
To: jamaral@Westlandswater.org
Subject: PR Consultants List
Attachments: PR.Consultants Conf Call Team.docx

This list is a little outdated but gives you an idea of the participants.

Gayle Holman
Public Affairs Representative
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED] - [REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

Friday morning 7:30 AM PR/Legislative Conference Call

Alan Elias
aelias@mercuryllc.com

Alison MacLeod
amacleod@ka-pow.com

Camela McHenry
cmchenry@ka-pow.com

Carolyn Jensen
cjensen@ka-pow.com

Catherine Karen
ckaren@sidley.com

Cheryl Faunce
cfaunce@cwdc.com

David Bernhardt
dbernhardt@BHFS.com

Dennis Cardoza
dcardoza@foley.com

Denny Rehberg
drehberg@mercuryllc.com

Doug Subers
dsubers@ka-pow.com

Ed Manning
emanning@ka-pow.com

Erick Mullen
emullen@mercuryllc.com

Gayle Holman
gholman@westlandswater.org

Jason Peltier
jpeltier@westlandswater.org

Jim Watson
jwatson@westlandswater.org

Joe Findaro
joe.findaro@akerman.com

Karen Clark
kclark@westlandswater.org

Mike Burns
mburns@ka-pow.com

Sheila Greene
sgreene@westlandswater.org

Susan Ramos
sramos@westlandswater.org

Tom Birmingham
tbirmingham@westlandswater.org

Updated: 3/17/14

From: joe.findaro@akerman.com

Sent: Monday, May 4, 2015 6:27 AM

To: TBirmingham@westlandswater.org; dperacchi@westlandswater.org; drehberg@mercuryllc.com; cmanson@westlandswater.org; swoolf@westlandswater.org; jpeltier@westlandswater.org; emanning@ka-pow.com; ckaren@sidley.com; dbernhardt@bhfs.com; gholman@westlandswater.org; pwilliams@westlandswater.org; dcardoza@foley.com; jamaral@westlandswater.org

Subject: Fwd: Environment & Energy, May 4th, 2015, 'Senators to spar over FWS funding, ESA reform bills'

ENDANGERED SPECIES:

Senators to spar over FWS funding, ESA reform bills

Corbin Hiar, E&E reporter

Published: Monday, May 4, 2015

The Fish and Wildlife Service budget and a landmark conservation law that the agency is tasked with enforcing will be fiercely debated at a Senate hearing this week.

The Environment and Public Works Committee hearing will begin with Chairman James Inhofe (R-Okla.) and his fellow Republicans grilling FWS Director Dan Ashe about the agency's \$1.6 billion spending request, which is \$135.7 million over fiscal 2015.

Ashe has argued in previous House hearings that much of the increase will go to various state and private-sector conservation partnerships that can pay off exponentially (E&E Daily, March 18).

But GOP members of Congress have criticized the spending plan as unrealistic and misguided. It does not adhere to "sequester" spending levels agreed to in a 2011 budget deal and does too little to address the agency's estimated \$1.3 billion deferred maintenance backlog, they have argued.

Ashe will likely have to address those Republican concerns again as well as fears that the agency may seek to protect the greater sage grouse and northern long-eared bat under the Endangered Species Act or not remove the gray wolf from the law's list of endangered or threatened species.

When lawmakers are done with Ashe, the committee will have a second panel of experts to help it discuss a slate of always controversial ESA-related bills. The measures generally seek to add new transparency requirements to the 4-decade-old conservation law or prevent the listing of certain species under it.

Inhofe has previously said that the law has "gotten out of hand" and vowed that his committee will be "very active" in its attempts to overhaul it (E&E Daily, Jan. 27).

Two of the three witnesses are likely to be largely in favor of the ESA reform bills on the docket -- all but one of which were introduced by Republicans.

The first, David Bernhardt, served as Interior Department solicitor under President George W. Bush. Since then, he has worked at the law firm Brownstein Hyatt Farber Schreck, where he has lobbied for water utilities, mining companies and energy developers. Those industries are frequently at odds with FWS over ESA regulations.

The second witness likely to argue in favor of the largely GOP legislative slate is Gordon Cruickshank, the chairman of Idaho's Valley County Commission. An open-pit mining project in his county was put on hold for a second time last year after the Forest Service was sued by the Idaho Conservation League and Nez Perce Tribe. The conservationists

complained that federal regulators had failed to fully consider how the Midas Gold Corp.'s Golden Meadows project could harm ESA-protected chinook salmon, steelhead and bull trout fish species (Greenwire, June 26, 2014).

The final expert, Defenders of Wildlife conservation program leader Don Barry, is likely to be more critical of Republican reforms. Barry, who served as Interior's assistant secretary for Fish and Wildlife and Parks during the Clinton administration, has argued in the past that GOP attempts to add transparency to the ESA will only weaken the law and make it more difficult to implement.

There are five transparency-related bills up for consideration:

S. 112 -- introduced by Sen. Dean Heller (R-Nev.), the "Common Sense in Species Protection Act" would require the Interior secretary to publish and make available for public comment a draft economic analysis of a critical habitat designation when it is proposed. Such designations place restrictions on federal actions, permitting and spending in areas deemed essential for the conservation of species protected by the Endangered Species Act (E&E Daily, Jan. 9).

S. 855 -- Kentucky Republican Sen. Rand Paul's "Endangered Species Management Self-Determination Act" would require federal power marketing administrations to include the direct and indirect costs of complying with the ESA on customers' monthly electricity bills. The bill from the GOP presidential candidate also calls for the Interior secretary to obtain the consent of governors before making management decisions that would affect species within their states and would require congressional approval of the endangered and threatened species lists (E&E Daily, March 26).

S. 293 -- referred to in previous sessions as the "Endangered Species Act Settlement Reform Act," Texas Republican Sen. John Cornyn's bill would require Interior to provide notification of when it is hit with an ESA lawsuit and would set a lower standard for when outside groups like oil and gas companies can intervene in such citizen suits, which are often filed by environmental groups. The goal of the bill, according to Cornyn, is to bring transparency to settlements like a 2011 deal between Interior, the Center for Biological Diversity and WildEarth Guardians, that established a six-year schedule for FWS to issue final listing decisions for roughly 250 species, which agency scientists had previously determined were in need of protections (E&ENews PM, Sept. 9, 2011).

S. 292 -- also introduced by Cornyn, the "21st Century Endangered Species Transparency Act" would require the Interior and Commerce secretaries to publish any scientific and commercial data online that are used for listing and delisting species protected by the ESA but prohibit the posting of landowners' "personal information" (E&E Daily, Jan. 30).

S. 736 -- Wyoming Republican Sen. Michael Enzi's "State, Tribal and Local Species Transparency and Recovery Act" would, like S. 292, require the publication of data used to justify listing decisions. But it would also call on federal regulators to use data submitted by a state, tribal or county governments in making such determinations.

The remaining four bills that the committee plans to consider either deal with specific high-profile species or, for the lone Democratic measure, a method used to capture some animals.

Members will consider S. 1036, by Sen. Cory Gardner (R-Colo.), to delay a FWS listing of the sage grouse for at least six years in Western states that have proposed their own sage grouse conservation plans. The bill would also require the Interior Department to "immediately reverse any withdrawals or land use restrictions carried out for purposes of protecting or conserving sage-grouse on public land or National Forest System land that are not consistent with a statewide plan," according to the bill.

The bill, backed by mining, oil and gas, and grazing interests, is part of a multipronged Republican effort to block the Obama administration's grouse preservation efforts in favor of state-tailored plans.

Another bill, S. 468 by Sen. Orrin Hatch (R-Utah), would allow the Bureau of Land Management and Forest Service to use categorical exclusions to expedite the removal of pinyon or juniper trees that threaten sage grouse or mule deer.

A bill introduced by Sen. John Thune (R-S.D.) in March, S. 655, could have prevented Interior from using funds to make a final determination on the listing of the northern long-eared bat, which could harm the bottom lines of energy and lumber producers. But the bat was listed as threatened under the ESA the following month, so it is unclear what effect the legislation could have at this point (Greenwire, April 1).

Finally, a measure from Sen. Cory Booker (D-N.J.), S. 1081, would prohibit the use of body-gripping traps on national wildlife refuges. The legislation, which has also been introduced in the House, is strongly supported by animal advocacy groups like the International Fund for Animal Welfare, according to an IFAW press release.

Schedule: The hearing is Wednesday, May 6, at 9:30 a.m. in 406 Dirksen.

Witnesses: Dan Ashe, director, Fish and Wildlife Service; David Bernhardt, former solicitor, Interior; Don Barry, senior vice president, Defenders of Wildlife; and Gordon Cruickshank, commissioner, Chair Valley County, Idaho.

[vCard](#) | [Bio](#)



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From: Jason Peltier
Sent: Friday, May 8, 2015 4:07 PM
To: Dennis Cardoza; Joe Findaro; David Bernhardt; Ara.azhderian@sldmwa.org; Philip Williams
Subject: FW: Executive Director's Report
Attachments: memo050815.docx

FYI

From: Dan Keppen [mailto:dankeppen@charter.net]
Sent: Friday, May 08, 2015 3:09 PM
To: Bill Kennedy; 'Chris Hurd'; [REDACTED]@[REDACTED] [REDACTED] 'Don Schwindt'; 'Harold Mohlman'; 'Harvey Bailey'; Marc Thalacker; 'Pat O'Toole'; 'Ron Rayner'; 'Sandy Denn'; 'Tom Schwarz'; 'Antonio Ortega'; 'April Snell'; 'Bill Plummer'; 'Brad Wind'; 'Bruce Whitehead'; 'Cary Keaten'; Chanee Grant; 'Chris Udall'; 'Chris Voight'; Clifford Searle; 'Clinton Pline'; Dale Swensen; 'Dan Laursen'; 'Daren Coon'; 'Dave Solem'; 'David Mansfield'; Dean Edgar; 'Don Kraus'; Eric Quinley; 'Gary Esslinger'; 'Gering Ft Laramie ID'; 'gering-ft laramie ID #2'; 'Grant Ward'; 'Ivan Ray'; 'James Broderick'; 'Jamie Mills'; 'Jason Peltier'; 'Jeff Sutton'; 'Joe Rutledge'; 'Ken Curtis'; 'Larry Bauman'; 'Larry Hicks'; 'Mark Atlas'; 'Matt Harris'; Matt Lukasiewicz; Mike Britton; 'Mike LaPlant'; 'Natasha Montgomery'; 'Norm Haak'; 'Norm Semanko'; 'North Platte Irrigators'; 'Pat Riley'; 'Paul Orme'; 'Rebecca Davidson'; 'Richard Moss'; 'Sheldon Jones'; 'Steve Benson'; 'Tom Davis'; Tom Knutson; 'Tom Myrum'; 'Wade Noble'
Cc: 'Mark Limbaugh'; 'Gary Sawyers'
Subject: Executive Director's Report

Dear Alliance Directors and Advisory Committee Members:

Attached, please find the May 2015 executive director's report (EDR), which is intended to keep you apprised as to what is happening behind the scenes on policy issues the Alliance is engaged in.

Some of these issues will be discussed on our next joint teleconference of the Board of Directors and Advisory Committee, scheduled for next **Wednesday, May 13, 2015 at noon (Pacific, including Arizona), 1:00 p.m. (Mountain); 2:00 p.m. (Central), 3:00 p.m. (Eastern).** Dial-in Number: 866-[REDACTED]-[REDACTED] Code: hit *, then [REDACTED] then * again.

I will send out our financial report to the directors and a final meeting agenda to all in the coming days.

The attached EDR is intended for your use, but I understand that you may wish to share this information with your local board members and close associates. I would ask that you be circumspect when you share this information, however.

I was also quoted in a *Washington Post* article that ran earlier today:

http://www.washingtonpost.com/business/economy/could-drought-slow-americas-most-vibrant-economy/2015/05/08/bb196ff8-ea8d-11e4-aae1-d642717d8afa_story.html?postshare=881431115360155

I still haven't sat down and closely reviewed this story, which at first glance, I do not particularly love. But, at least the reporter gave me a decent quote.

Please do not hesitate to contact me if you have any questions about Wednesday's teleconference call or the Executive Director's Report.

Best regards-

Dan Keppen
Executive Director



MEMORANDUM

TO: BOARD OF DIRECTORS AND ADVISORY COMMITTEE
FROM: DAN KEPPEN, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: MAY 8, 2015
CC: MARK LIMBAUGH, GARY SAWYERS

This executive director's report (EDR) is intended to keep you apprised as to what is happening behind the scenes on policy issues the Alliance is engaged in, some of which we will discuss on our next joint teleconference of the Board of Directors and Advisory Committee, scheduled for next **Wednesday, May 13, 2015, at noon (Pacific, including Arizona) 1:00 p.m. (Mountain); 2:00 p.m. (Central), 3:00 p.m. (Eastern).** This report is intended for your use, but I understand that you may wish to share this information with your local board members and close associates. I would ask that you be circumspect when you distribute this, however.

In the past month, Alliance efforts have focused on California drought public education challenges, Colorado River Basin policy, completing important policy reports, and assessing and developing joint correspondence to federal agencies and the media. These issues and others are discussed in this EDR.

ADMINISTRATION ACTIONS

1. New Bureau of Reclamation (Reclamation) Appointees

Ann Adler has been appointed to serve as the Bureau of Reclamation's Chief, Congressional and Legislative Affairs. She will oversee Reclamation's congressional and legislative affairs activities and serve as Reclamation's primary liaison with Congress. Adler started her career working for U.S. Senator Robert C. Byrd and then moved on to become the Senior Policy Advisor for the House of Representatives' Natural Resources Committee, Democratic staff. In 2011 she became the Deputy Chief of Staff for the House's Transportation & Infrastructure Committee, where she helped to direct operations of the Committee Minority.

Reclamation's Mid-Pacific Region announced that Therese O'Rourke Bradford has been selected as the Area Manager for the Klamath Basin Area Office. Brian Person, acting Area Manager, is currently in the position and will retire next month. Ms. O'Rourke Bradford will begin in early June. O'Rourke Bradford currently works as a Regulatory Branch Chief for the U.S. Army Corps of Engineers in Carlsbad, California. Previously she worked as an Assistant Field Supervisor for the U.S. Fish and Wildlife Service, as a District Ranger for the U.S. Forest Service in Dillon, Colorado, and as a Senior Program Manager for the Nature Conservancy in southern California.

2. U.S. Department of Interior: Agency-Specific Procedures for PR&G

The Family Farm Alliance and other Western water and power organizations are preparing a joint letter to the U.S. Department of Interior (Interior) and Bureau of Reclamation (Reclamation) on proposed procedures that could have a critical bearing on how new water resource development projects and programs are evaluated in the future. Alliance representatives last month participated in a teleconference briefing to learn more about recent Interior efforts to develop Agency-Specific Procedures (ASP) that will implement Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies (PR&G). Development of the PR&G was authorized by the 2007 Water Resources Development Act, passed by Congress and signed into law. The PR&G govern how Federal agencies evaluate proposed water resource development projects and programs. Many of us in the water user community believe these procedures – if not properly prepared - may increase delays and offer more opportunities for water project critics to put up more road blocks.

Immediately after teleconference call with Interior, the Alliance initiated efforts to call for an extension to the April 30 deadline for comments on the draft ASP. By the end of the week, a joint letter signed by the Alliance, National Water Resources Association, Association of California Water Agencies, Colorado River Energy Distributors Association, Oregon Water Resources Congress and Irrigation and Electrical Districts Association of Arizona was transmitted to Interior Department Deputy Assistant Secretary for Water and Science Tom Iseman and Bureau of Reclamation Commissioner Estevan Lopez. This letter requested an extension of Reclamation's comment period for the Interior Department's ASP implementing the new PR&G for federal water project investments. Later in the month, Interior granted an extension of the comment period to May 15.

The Alliance is currently working with the signatories to the above letter in an effort to review and develop detailed comments regarding the proposed ASP, which can be downloaded here: <http://www.doi.gov/ppa/principles-and-guidelines.cfm>. Earlier this week, I shared with you our detailed, draft comment letter. If you have any concerns or suggested edits to the draft, I need to have them in hand by May 13.

3. Farm Bill Conservation Programs

Proposals are now being accepted for the Regional Conservation Partnership Program (RCPP), a new Farm Bill program that empowers local communities to work with multiple partners, farmers, ranchers, and forest landowners to design solutions that work best for them. Recall that the Alliance – through our involvement with the Western Agriculture and Conservation Coalition– was actively engaged in influencing this program, which wraps in long-time funding programs like EQIP and AWEPP. This will be the second round of projects funded through RCPP. A couple of things worth noting about the announcement for proposals: 1) It will include a request for bids for alternative funding arrangements; and 2) Applicants can include in their proposals a request for PL 566 funding. The beauty of this is that PL 566 funds can more easily go directly to irrigation districts.

4. Environmental Protection Agency (EPA): Clean Water Act (CWA) Rulemaking

EPA has sent its final CWA jurisdiction rule for White House Office of Management & Budget (OMB) pre-publication ahead of what they agency says is a target April release date, the last major regulatory step before EPA can issue the rule that its top water official says is vital to provide certainty on the law's reach. Once OMB completes its review –which typically takes 90 days but can take far more or far less time depending on the policy - the agency will then be able to formally publish it in the *Federal Register*.

The Alliance dedicated significant time and resources last year towards addressing EPA and Corps of Engineers' proposed rule on which "Waters of the U.S." (WOTUS) are jurisdictional under the CWA. The Alliance final WOTUS comment letter that outlines our concerns was hand-delivered to senior EPA policy makers in Washington late last year. Republicans in Congress have EPA and Corps in their sights on this topic (see below). Even if opponents do have enough votes in the Senate now to pass stand-alone legislation to block the water rule, President Obama would all but certainly veto it, and they are still far from having enough votes for an override. Right now, it looks like it will be difficult to get anything through Congress to stop the rule before it is finalized. So, any legislative effort will that is eventually accomplished would likely need to retroactively strip the rule from the books. Mark Limbaugh and I are glad we shared our final WOTUS comment letter and had our discussions with EPA on ditches and canals last November. Now, we are just keeping our fingers crossed that they actually fixed our issues of concern.

5. U.S. Food and Drug Administration (FDA): Food Safety Modernization Act (FSMA)

Two weeks ago, Mark Limbaugh, the Alliance's representative in Washington, D.C. took one for the team and spent an entire day participating in a workshop sponsored by the Food and Drug Administration (FDA) regarding its Food Safety Management Act (FSMA) implementation workshop. As you may recall, the Alliance and others in production agriculture in the past year have transmitted formal comments to the FDA on the agency's revised *Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption* rule. FDA has

made key changes to proposed rules on the safe growing and handling of food. FDA published in the *Federal Register* a supplemental notice on the intent to amend certain specific provisions to the "Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption" proposed rule. The original rule was proposed to set standards on the use of agricultural water, manure that is mixed into the soil, and the health and hygiene of farm animals to avoid the presence of pathogens on fruits and vegetables.

Last year, the Alliance and hundreds of other agricultural organizations submitted formal comments on FDA's proposed rule on "Preventive Controls for Human Food" and a proposed rule on "Standards for Produce Safety". Our letter also outlined more specific concerns that some agricultural water providers have raised regarding the potential costs and liability associated with the new water quality testing requirements proposed in the regulations. Mark had the pleasure of participating in the recent FDA workshop, which generally featured presentations by agency spokespersons on how the agency intends to implement key aspects of FSMA. Mark prepared some useful notes, which I consolidated into a memo that I sent to you earlier this week. The memo emphasized the produce safety / water quality issues that are of great concern to our membership.

6. Department of Interior: U.S. Bureau of Reclamation Colorado River Basin Management

Reclamation in December began soliciting project proposals for water conservation from Colorado River entitlement holders in Arizona, California and Nevada. Water users in the river's Upper Basin will be invited to participate in the agreement at a later date. Municipalities and Reclamation are providing up to \$11 million to pay for new Colorado River water-conservation projects. The projects are intended to demonstrate the viability of cooperative, voluntary projects to reduce demand for Colorado River water. The program is soliciting project proposals from agriculture, and municipal and industrial Colorado River water entitlement holders.

Reclamation is planning on releasing its post-Colorado River Basin Study ("Moving Forward") report on May 12. The "roll-out" will include:

- A Reclamation press release;
- Posting of the report to an updated version of Reclamation's Moving Forward website at: <http://www.usbr.gov/lc/region/programs/crbstudy/MovingForward/>;
- An email to Reclamation's 500+ member distribution list; and
- Public webinars to follow the release, date TBD.

Reclamation will follow up with a link to the reports and more information regarding the public webinars, once available. Some of the conservation groups are going to put out op-eds, saying the same stuff they always do. We have developed a joint press release with Trout Unlimited and Colorado River District that talks about the importance of water in agriculture, the need for collaboration, and the types of projects that are already being put to work thanks to innovative producers and practical conservation partners. We agreed that while we are not drafting this in

the context of the Moving Forward report, the report's timing next week and subsequent coverage could inform our final content. Therefore, we have at least a week before this will go out. When it's final and we're agreed on timing, Trout will mail to Colorado media outlets. The Alliance and CRD will mail to their own non-media contacts.

Finally, earlier this week I shared with you the draft white paper that a small group of us have been working on for the past year, per the direction of the Family Farm Alliance board of directors. An earlier draft of this letter was shared with our Colorado River Basin directors and Advisory Committee members. This has been incredibly challenging, trying to draft something that we hope all of you feel comfortable with, and knowing and understanding your differing perspectives. We have a ways to go on the draft white paper, but have received some very important review comments from our members that will make the final paper much improved.

7. U.S. Department of Agriculture, Forest Service: Groundwater Directive

The U.S. Forest Service last month announced it would halt work on the controversial Proposed Directive on Groundwater Management released last year. Forest Service Deputy Chief Leslie Weldon announced the decision at a House Natural Resources Subcommittee on Water, Power and Oceans hearing. The Family Farm Alliance in 2014 was actively engaged on this matter, and worked with Western Governors Association, National Water Resources Association, and others in the regulated community to express concerns on possible infringement by the proposed directive with state water law. The Alliance's detailed comment letter on this matter was distributed at a related oversight hearing conducted last summer by the House Water and Power Subcommittee. Last year, the leadership of the Congressional and Senate Western Caucuses led a bicameral letter to Agriculture Secretary Tom Vilsack warning that the proposed Groundwater Directive would restrict access to public lands and interfere with state and private water rights. This is a victory that would not have been won without a concerted effort between Western water users, governors, and our Western Members of Congress. Now, we need to apply the same energy to ensure that the Forest Service's water quality Best Management Practices directive is also properly vetted.

ACTIVITY IN CONGRESS

Mark Limbaugh of The Ferguson Group reports that the Senate was in session this week, while the House was in recess. The Senate considered the House-adopted budget resolution for fiscal year (FY) 2016, which would give Congress the ability to circumvent filibusters by Senate Democrats to pass policy changes, such as repeal or revision of the Affordable Care Act. Last Thursday, House Majority Leader Kevin McCarthy (R-CALIFORNIA) released a memo outlining the House agenda for May and touted the accomplishments of the first 100 days of the 114th Congress. When the House returns next week, it will take up a bill to cancel the proposed "Waters of the United States" rule and replace it with a new rulemaking after extensive stakeholder outreach.

8. Senate EPW Committee Moves “Secret Science” Bill to Floor

The Senate Environment and Public Works (EPW) Committee last week approved (along party lines) S.544, the "Secret Science Reform Act" introduced by Sen. John Barrasso (R-WYOMING) and co-sponsored by GOP Sens. David Vitter of Louisiana, Mike Crapo of Idaho and Deb Fischer of Nebraska, along with EPW Chairman James Inhofe of Oklahoma. The bill would prohibit EPA from finalizing rules that are based on science that isn't "transparent or reproducible." It would also compel EPA to make publicly available all the studies and data that go into its rulemakings. The legislation was sent to the Senate floor with one Democratic amendment that would bar the censorship of common terms, such as a "climate change," in official documents. The House last month passed its version of the bill, mostly along party lines, despite a White House veto threat.

9. Senators Introduce Bipartisan WOTUS Bill

Last week, a bipartisan group of Senators introduced S. 1140, the “Federal Water Quality Protection Act” in the 114th Congress. The bill would require that EPA and the Corps withdraw their current controversial “waters of the U.S.” (WOTUS) proposed rule and work with states and other stakeholders to recraft the rule defining which streams and wetlands are protected under the Clean Water Act, using specific guidance included in the legislation. Sens. John Barrasso (R-WYOMING) and Joe Donnelly (D-IN) sponsored the bill, along with cosponsors Sens. Heidi Heitkamp (D-NORTH DAKOTA), Joe Manchin (D-WV), and eight other Republican cosponsors, including Senate Majority Leader Mitch McConnell (R-KY).

S. 1140 requires the newly crafted rule to follow specific principles relating to what types of waters can and cannot be covered, and what types of factors can be used to justify federal oversight. The bill also requires the new rule use an expanded set of regulatory reviews than those the current rule went through, including analyzing the impacts of the rule on small businesses and unfunded mandates. The bill calls for EPA and the Corps to "use best efforts" to publish a final rule by the end of 2016.

A large group of farm and commodity organizations support the legislation (including the Family Farm Alliance), along with the National Association of Counties and U.S. Conference of Mayors, while conservation and environmental groups steadfastly oppose the bill.

Also last week in the Senate, Sen. Jeff Flake (R-ARIZONA) introduced his bill, S. 1178, to prohibit implementation of a proposed rule relating to the definition of the term "waters of the United States" under the Clean Water Act, or any substantially similar rule, until a Supplemental Scientific Review Panel and Ephemeral and Intermittent Streams Advisory Committee produce certain reports, and for other purposes. The bill has no other cosponsors at this time. Earlier in April, Sen. Rand Paul (R-KY) introduced legislation, S. 980, that would block EPA from finalizing the rule, and restrict the definition of “navigable waters” subject to the CWA. The bill

has the support of Senate Majority Leader Mitch McConnell (R-KY) and four other Republicans, but not Senate EPW Committee Chairman Inhofe (R-OK).

The House is currently considering its version of WOTUS legislation (H.R. 1732 – the “Regulatory Integrity Protection Act of 2015”) which is headed to the House floor and has drawn a veto threat from the White House. Sponsors of S. 1140 at an April 30 press conference touted the Senate bill's “moderate” language, saying they anticipate receiving enough Democratic support to possibly override a potential presidential veto.

Also, the House passed last week their Energy and Water Development Appropriations bill that includes restrictions on the implementation of the current proposed WOTUS rule. Many believe WOTUS language has its best chance of success in the appropriations process, since that would force the White House to prioritize its regulatory agenda (WOTUS/greenhouse gas – power plant regulations) in light of negotiating passage of FY2016 appropriations bills funding the federal government.

Other amendments dealing with Western water issues were included in the energy and water appropriations bill (H.R. 2028). An amendment offered by Rep. Tom McClintock (CALIFORNIA) would prohibit use of funds for the purchase of water to supplement or enhance instream water flow requirements in California. Rep. Doug LaMalfa (CALIFORNIA) offered an amendment that would prohibit use of funds to deliver water to the Trinity River above the minimum requirements of the Trinity Record of Decision or to supplement flows in the Klamath River. Also, report language was included where the Committee notes the work being undertaken by Reclamation and the Natural Resources Conservation Service (NRCS) to coordinate the water use efficiency assistance authorized under the Secure Water Act and the on-farm water conservation assistance provided through the NRCS Environmental Quality Incentives Program. This partnership – supported by the Alliance - began in 2011 with attention focused in California, but has since expanded beyond this area. The Committee’s report “encourages Reclamation to continue working with the NRCS to identify and implement ways within existing authorities to extend the benefits of this collaborative effort throughout the West.”

10. House GOP Members Introduce Flurry of ESA Reform Bills

Last week, House Republicans introduced several bills related to reforming the implementation of the federal Endangered Species Act (ESA). In particular, ESA citizen suits are a focus of the GOP's reform. Such legal challenges, brought under the law by individuals or groups, have been used in recent years to force the Fish and Wildlife Service (FWS) to reconsider the status of dozens of species, placing arbitrary timelines for making decisions on listing hundreds of species under the ESA.

H.R. 2134 was introduced by Rep. Pete Olson (R-TEXAS), and would block such lawsuits from setting deadlines for the Department of the Interior to decide on whether or not to list species

under the ESA. The legislation would also allow Interior to take the potential cost of a listing decision into account when making such determinations.

H.R. 2109, the "Equal Access to Justice Act" would reform ESA citizen suits by placing a cap on how much agencies can reimburse the plaintiffs for their attorney fees. The bill was reintroduced from the last Congress by Rep. Bill Huizenga (R-MI), and was co-sponsored by Reps. Cynthia Lummis (R-WYOMING), Randy Neugebauer (R-TEXAS), Doug Collins (R-GA) and Crescent Hardy (R-NEVADA).

H.R. 2098, introduced by Rep. Rick Crawford (R-AR), would require the Interior Secretary to publish and make available for public comment a draft economic analysis as soon as any proposals are published that would set aside "critical habitat" under the ESA that limits federal actions in lands and waters needed to sustain listed plants and animals. The bill is co-sponsored by Reps. Steve Womack, Bruce Westerman and French Hill, all Republicans from Arkansas.

11. Senate EPW Committee Hearing This on FWS FY2016 Budget – ESA Reform Legislation

The Senate Environment and Public Works (EPW) Committee held a hearing this week with U.S. Fish and Wildlife Service (FWS) Director Dan Ashe providing testimony about the agency's \$1.6 billion FY 2016 budget request, which is \$135.7 million over FY 2015. Mr. Ashe told Committee that he supports overhauling the ESA, but suggested that reform bills introduced so far this session aren't up to that task. None of the nine endangered species-related bills that the committee went on to consider, however, has support from lawmakers on both sides of the aisle.

"We will have hand-to-hand combat on the floor if these bills get that far," Sen. Barbara Boxer (D-CALIFORNIA), the ranking member of the committee, said to Senator Inhofe. She went on to describe the measures as "really a backdoor repeal of the Endangered Species Act."

Senator Boxer also noted that the Natural Resources Defense Council and more than 20 other wildlife advocacy groups had signed a letter to senators urging them to oppose the measures. There are five ESA transparency-related bills up for EPW Committee consideration:

- S. 112, the "Common Sense in Species Protection Act" introduced by Sen. Dean Heller (R-NEVADA), would require the Secretary of the Interior to publish and make available for public comment a draft economic analysis of a critical habitat designation when it is proposed. Such designations place restrictions on federal actions, permitting and spending in areas deemed essential for the conservation of species protected by the ESA.
- S. 855, the "Endangered Species Management Self-Determination Act" introduced by Sen. Rand Paul (R-KY) would require federal power marketing administrations to include the direct and indirect costs of complying with the ESA on customers' monthly electricity bills. The bill also calls for the Interior Secretary to obtain the consent of governors before making management decisions that would affect species within their

states and would require congressional approval of endangered and threatened species listings.

- S. 293, the "Endangered Species Act Settlement Reform Act," introduced by Sen. John Cornyn (R-TEXAS) would require Interior to provide notification of when an ESA lawsuit is filed against the Department, and would set a lower standard for when outside groups can intervene in such citizen suits.
- S. 292, the "21st Century Endangered Species Transparency Act" was also introduced by Sen. Cornyn, and would require the Interior and Commerce Secretaries to publish any scientific and commercial data online that are used for listing and delisting species protected by the ESA but prohibit the posting "personal information" of private landowners.
- S. 736, the "State, Tribal and Local Species Transparency and Recovery Act" introduced by Sen. Michael Enzi (R-WYOMING) would, like S. 292, require the publication of data used to justify listing decisions. But it would also call on federal regulators to use data submitted by a state, tribal or county governments in making such determinations.

There are four remaining bills up for Committee consideration: S. 1036 (Gardner – R-COLORADO) to delay a FWS ESA listing of the sage grouse for at least six years in Western states that have proposed their own sage grouse conservation plans; S. 468 (Hatch – R-UTAH) to allow Bureau of Land Management and U.S. Forest Service to use categorical exclusions under the National Environmental Policy Act (NEPA) to expedite the removal of pinyon or juniper trees that threaten sage grouse or mule deer; S. 655 (Thune – R-SOUTH DAKOTA) to prevent a final determination on the ESA listing for the northern long-eared bat (already listed as “threatened” under the ESA); and S. 1081 (Booker – D-NJ) to prohibit the use of body-gripping traps on national wildlife refuges.

12. Alliance Supports Regulatory Integrity Protection Act

The Family Farm Alliance last month transmitted a letter of support for the Regulatory Integrity Protection Act, which would give the Obama Administration 30-days to withdraw the current proposed rule that spells out which “Waters of the U.S.”(WOTUS) are jurisdictional under the Clean Water Act. This bill also charges the Environmental Protection Agency and the Army Corps of Engineers with developing a new proposed rule. It is similar to legislation the Alliance supported in the last Congress.

EPA and the Corps have already transmitted the final proposed rule that would redefine WOTUS to the Office of Management and Budget for final review. As this rule progresses, we remain concerned that the very Clean Water Act jurisdictional issues the rule supposedly will clarify will be left even more uncertain, particularly in areas where Western farmers and ranchers store, move and apply water for irrigation of crops. This uncertainty brings with it the risk of additional burdensome regulations, time-consuming and potentially expensive

procedures, expanded opportunities for litigation, and a shift from local and state water management towards increased federal agency involvement and oversight.

When developing the new proposed rule, the agencies must take into consideration all of the comments received on the rule, the economic analysis of the rule, and the connectivity study which was used as the basis for the rule. Under the bill, the agencies are instructed to seek to reach consensus with states and local governments on defining WOTUS, maintain the federal-state partnership in implementing the CWA, and take into consideration state and local input regarding geography, hydrology, and legal frameworks. The agencies are also directed to consult with and solicit recommendations from stakeholders that represent a broad range of perspectives who could be impacted either directly or indirectly by the new rule.

13. What's happening with California / Western Drought Legislation?

There has been lots of speculation on the development of a California or West-wide drought bill. There appear to be two general paths forward:

- 1) Enactment this year of a California- focused bill with some items for other Western states, similar to the package that Senator Feinstein and the House Republicans were closing in on last fall. The goal would be to have something in-place for 2016.
- 2) California drought provisions would get wrapped into a larger Western water bill, which may make progress this year, but is more likely not to be enacted until next year, perhaps even late next year. Every day without action on #1 makes #2 more likely.

Right now, House Central Valley Republicans are pulling a bill together, reportedly based on the legislation that they were negotiating with Sen. Feinstein when she called off the discussions late last year because of Sen. Boxer's opposition. The House delegation wants to strengthen the bill, if it can, but it appears the Obama and Brown Administrations are limiting factors. Because Republicans now control the Senate, it seems likely that the House will have to approve a Republican-backed California drought bill before the Senate will consider one. So, the House will probably have to act first, which it can rapidly do once a bill is ready.

Meanwhile, Sen. Feinstein has been working on a bill that she hopes to introduce soon. She may well introduce a bill before the House does, and it may even get a hearing, but as noted above, the Senate will not act on a Democratic bill before it has a Republican bill. Under either of the options noted above, Sen. Feinstein and the House California Republicans will have to come to agreement if anything is to move forward, this year or next. Sen. Boxer is less of a factor now, but her opposition will mean that the Senate needs 60 votes to pass a California drought bill, and under no circumstances will a bill get 60 votes unless Sen. Feinstein supports it.

ALLIANCE INITIATIVES AND ACTIONS

14. 2016 Family Farm Alliance Annual Meeting and Conference

The Family Farm Alliance recently entered into a contract with the Monte Carlo Resort and Casino, which will once again host the Alliance's annual meeting and conference in Las Vegas. Mark your calendars: the general session of the 2016 Family Farm Alliance Annual Conference is set for February 18-19. In 2016, the Monte Carlo room rates will actually be \$9 lower than in 2015. We hope to see you there!

15. National Young Farmers Coalition

As you know, the Alliance has worked with the National Young Farmers Coalition (NYFC) over the past year on a variety of efforts intended to advance our successful securement of a grant from the Walton Family Foundation. With the help of consulting firm Applegate Group, we secured funds to conduct a multi-day agricultural tour in the Colorado River Basin to facilitate outreach, education and farmer-to-farmer exchange surrounding best-practices for agricultural water efficiency and conservation. The October 2014 tour examined ways to implement irrigation efficiency improvements across operation types, experience levels, generations and geographies, and addressed management of conserved water. We sought to activate young and beginning farmers in particular to share dialogue and experience with seasoned farmers in order to draw in new voices, enhance information- and thought-exchange, and improve long-term outcomes. This process resulted in a case studies document summarizing lessons learned. In fact, one of the case studies focuses on Pat's ranch in Wyoming. In recent weeks, I've circulated a copy of the final draft of this report for your review. The final product will be submitted to Walton Family Foundation next week. We are also working on a related op-ed that we will release next week.

NYFC has also been hard at work on its [Farming is Public Service](#) campaign to help farmers manage their student loan debt. Last month, I shared with you a draft report that NYFC has been working on that proposes a student loan forgiveness program for young farmers. NYFC aims to add farmers to the Public Service Loan Forgiveness Program. Under this proposal, individuals who farm while making income-based student loan payments would see the balance of their loans forgiven after 10 years. This program would help grow farms that are struggling under student debt and incentivize more young people to enter agriculture. NYFC is now getting ready to have some formal legislation introduced and are looking for partners to sign on. We will consider this further on Wednesday's teleconference call.

16. California Drought Crisis

Immediately after Gov. Jerry Brown last month ordered city dwellers across California to cut

water use by 25% as part of a sweeping set of mandatory drought restrictions, he was put on the defensive, as his administration tried to deflect criticism from urban media outlets that farmers were mostly spared from his latest drought mitigation measures. California farmers and ranchers watched in initial disbelief as misinformation about their way of life was broadcast out to the world, seemingly feeding on itself as the social media and anonymous bloggers derided Central Valley irrigators for wasteful water use, poor crop selection, and a host of other criticisms, many of which were based on decades-old myths. However, in recent weeks, producers from the nation's number one agricultural production state have channeled their anger and frustration into a determined, coordinated response that is slowly gaining traction with the public by telling the rest of the story. The Family Farm Alliance has closely monitored and engaged in this recent, volatile development.

a. Drought Impacts

After four years of hot and dry weather, more than 44% of California is now suffering from "exceptional" drought conditions, which is characterized by widespread crop and pasture losses, and shortages of water in reservoirs, streams and wells. With the exception of a sliver of San Bernardino County, the remainder of the state is in some state of official drought. With the record dry conditions experienced over the previous years, coupled with water supply reductions related to regulatory actions, water allocations for all use sectors were reduced with some agricultural water users receiving no allocations at all from the Central Valley Project (CVP). Settlement contractors, primarily agricultural water users, have water rights that pre-date the federal project, making them priority rights on the system, yet even allocations to those senior water rights holders are being reduced. Non-federal agricultural water users are also getting hammered this year. Some of the best water rights in the state – districts along the Feather River - will see their water allocations decreased by 50 percent this year, the first cuts since 1992.

b. Initial Media Coverage

California Governor Jerry Brown on April 1 issued an executive order imposing a 25% reduction on the state's 400 local water supply agencies over the coming year. The governor's order focused primarily on urban water use, since he rightfully acknowledged that many farmers and ranchers went without any water in 2014. Newspapers in Los Angeles, the Bay Area, Washington, D.C. and New York City jumped all over the perception the farmers had somehow been exempted from the governor's statewide water use cuts and began broadcasting messaging long favored by certain environment groups, criticizing farmers for producing too many water-intensive crops, hogging the lion's share of water in California, and over-pumping groundwater. In reality, more than 2 million acres of farmland saw its surface water supply from the federal government shut off last year. Another near million acres that gets surface water from the State received only 5 percent of its supply last year. This year, over 41 percent of California's irrigated farmland will lose 80 percent or more of its normal surface water allocation, according to a new survey by the California Farm Water Coalition. This survey shows that 3.1 million acres of California's irrigated farmland will see deep cuts to the water delivered in a normal year. These

actions are due, in part, to decisions made by state and federal agencies that kept the contracted water instream to meet the perceived needs of the environment.

Much of the initial mainstream media accounts since the governor's announcement also advanced the decades-old myth that agriculture consumes about 80 percent of California's water. Actually - agriculture now uses 41 percent of California's total water supply, according to the California Department of Water Resources (DWR). Others in the media suggested that the shift in crops towards higher value crops like nuts and wine grapes have led to an increase in agricultural water use. For a few weeks, almonds were the preferred villainous target of these reports. But according to California DWR, the total amount of agricultural water has held steady since 2000 and actually declined over a longer period. Governor Brown has thus far defended his executive order's treatment of the state's agriculture industry and its use of water.

c. California Producers Respond to Backlash

The initial reaction of California farmers to the media coverage was one of disbelief, and a slowly percolating anger that grew as more and more media outlets jumped on the ag-bashing bandwagon. Leaders in California farming and ranching circles began comparing notes, and collaborating with others in an effort to stem the rising tide of media negativity. California Farm Bureau, California Farm Water Coalition, California Water Alliance, the Family Farm Alliance and commodity groups from throughout the state began to share reviews of articles, develop information, and craft messaging intended to address a handful of key fallacies that continued to surface in the press and social media. In addition to the "80 percent" figure, efforts focused on the question of crop choices, the environmental values that well-managed farm and ranchland provide, and the investments irrigators have made to improve water efficiency.

The efforts of the California farm and ranching community are starting to pay off. Importantly, more balanced recent coverage has been delivered that captures the reality of what is going on in California. Five years ago, reservoirs in California were brim full of water. Since then, much of that stored water – which had previously supplied Central Valley farms for decades – has been allowed to flow out the Golden Gate by federal fisheries agencies, with no apparent benefit for the fish species it is intended to protect. As is often the case, what happens in California often has a ripple effect that extends to other Western states. For example, the common acceptance that "farmers use 80% of the water" is a mythical argument that is applied by critics of irrigation in areas throughout the West. The current drought crisis in California may prove to be a catalyst that sparks increased global awareness of the importance of irrigated agriculture.

d. Recent Political Developments

Urban residents throughout California will face water cutbacks for the next nine months under emergency regulations released in last April. The State Water Resources Control Board earlier this month approved the rules by a 5-0 vote after a marathon, 10-hour meeting. Separately, Governor Brown announced he would propose legislation to strengthen local governments'

powers to enforce drought regulations, among them increasing fines to \$10,000 per violation, up from \$500 currently, and allowing water agencies themselves to issue fines, rather than just city and county governments. He also vowed to work on expediting water supply projects, within and outside of the legislative process, despite the fact that Democrats in the State Assembly killed legislation that would streamline environmental review for the Sites Reservoir in the Sacramento Valley and Temperance Flat on the San Joaquin River near Fresno. The governor continues to support the construction of two tunnels that would move water south underneath the Sacramento-San Joaquin Delta, and told attendees at the Association of California Water Agencies spring meeting that opponents of his Delta water tunnel proposal should just “shut up.”

e. Family Farm Alliance Efforts

The Family Farm Alliance has worked closely with its members and allies in California in the past month to address the challenges posed by recent media coverage. Some believe the latest media barrage is part of an orchestrated effort, intended to influence the California State Water Resources Control Board, who is contemplating placing restrictions on century-old water rights claims that have been previously shielded from water reductions. The board's move could place restrictions on those with claims to water before 1914 for the first time in the current drought, an action that was acknowledged by Governor Brown.

The Family Farm Alliance recently completed a timely review of the economic impact of Western irrigated agriculture that the organization hopes can be used as a tool to seek solutions to water challenges in California and other parts of the West. The Alliance's “Economic Importance of Irrigated Agriculture” report finds that, for the 17 states in the Western U.S. in 2013, the annual total household income impacts derived from the agricultural production and related services, and food processing, are estimated to be about \$172 billion annually. Our report finds that our national economy benefits from a low-cost food supply, making available large blocks of disposable income to the consumer spending economy, as well as the availability of high quality food sources provided by Western irrigated agriculture.

In the past month, the Family Farm Alliance has also advocated for its California members in an on-line debate hosted by the *New York Times*, where I was invited to post a 300-word commentary on the *Times* Opinion Page “Room for Debate” on April 7. The Eugene (OREGON) Register-Guard also published an Alliance guest column later in the month, titled “Farmers not to blame for crisis in California”. Earlier this week, I participated in a call with a large group of water district and commodity interests to discuss a new large scale PR effort related to water and agriculture in California. The call was informational and covered who is heading the effort, the purpose, budget, goals, etc. I was also quoted in an article that appeared today in the *Washington Post*. Finally, we recently completed a joint op/ed piece with NWRA and ACWA that we hope will run in one or more California urban papers in the near future.

ADMINISTRATIVE AND MISCELLANEOUS ISSUES

- Last week, I attended the CLE International conference on the Law of the Colorado River. I was joined on my panel by representatives from the Colorado River Commission of California, The Nature Conservancy, and Southern Nevada Water Authority to discuss “Competing Priorities on the River”; I provided the perspective of “Agriculture in the West”.
- Two weeks ago, I shared with you a news release from the Friant Water Authority regarding the agreement reached with General Manager Ron Jacobsma, (a long-time and strong member of our Advisory Committee), who stepped down from his position. In my view, Ron is the epitome of what our organization’s founders envisioned when they created the Advisory Committee. I hope you’ll join me in thanking Ron for his service to California and Western water users, and wish him and his family the best as he pursues his future endeavors. Eric Quinley will serve as acting G.M. at Friant; please welcome him to the Advisory Committee!
- Spring-run Chinook salmon could return to their historic spawning habitat on the North Yuba River (CALIFORNIA) under a still-developing agreement involving three agencies (including the Yuba County Water Agency) and three conservation groups. When completed, the agreement would create a first-ever “collect and transport” program in California, like those successfully used for decades in Oregon and Washington to move salmon around dams too tall for fish ladders. The program would return spring-run Chinook salmon and possibly steelhead to more than 30 miles of the North Yuba River. Deep, cool pools on this stretch of the river provide ideal habitat for the species that summers in mountain streams before spawning in the fall. In addition, the agreement would create a program to enhance salmon and steelhead habitat in the lower Yuba River downstream of Englebright Dam.
- I have been invited to be the opening speaker at the June 3 lunch for the U.S. Committee on Irrigation and Drainage conference in Reno (NEVADA). The conference theme is “Sustainable Basin Water Management — Challenges of Supply and Demand Management at the Basin Scale.”
- I will also be presenting a journal article on Central Valley “regulated drought” issues to the annual meeting of the Association for Environmental Studies and Sciences on June 25 in San Diego (CALIFORNIA). This is an effort that I’ve been working on for over a year. The final manuscript should be approved for publication in the coming weeks; as soon as I get the word, I’ll share it with you.

I appreciate all of the helpful input I have received from many of you in the past month. Please do not hesitate to contact me if you have any questions about this report.

From: Ara Azhderian

Sent: Monday, May 11, 2015 1:23 PM

To: Weaver, Kiel; 'David Bernhardt'

CC: Wong, Bryson; Jason Peltier

Subject: RE: Help on the water losses associated with Smelt

Attachments: 2015 OCAP BiOp Impacts Tally.pdf; Trib Flow Sharing to Delta 1992_2014.pdf; 2013 Benefits of -6500 OMR.pdf

Hi Kiel,

Good to hear from you. Attached are a couple of graphs to illustrate your point or that you might find helpful. To be clear, in 2013-14 the FWS DS BiOp did not control; no water was lost to it. However, in 2012-13 and 2014-15 that was not the case, and water was lost to NMFS in all years. Attached:

- 1) 2015 OCAP BiOp Impacts Tally: Calculates all water lost this year from CVP and SWP due to ESA driven pumping restrictions, nearly ~477,000 acre-feet lost in ~ 4 months. Nearly enough water to meet the needs of San Francisco for 6 years. Absent this water, wildlife refuges and ~2 million acres of farmland are suffering from extreme to absolute (0% CVP allocation) water supply shortages. These shortages impact a number of listed species, including giant garter snake, kit fox, and kangaroo rat, to small, rural, often disadvantaged communities like Huron, Avenal, and East Porterville.
- 2) Trib Flow Sharing to Delta 1992-2014: Calculates how use of water that comes from the Delta's tributaries is divided... spoiler alert, 54% flows into the ocean.
- 3) 2013 Benefits of -6500 cfs OMR: Demonstrates the water supply benefit of implementing a scientifically justified OMR of -6,500 cfs, which over a 2 ½ month period would have resulted in an additional 435,000 acre-feet south of the Delta in 2013. Water that would have gone far to mitigate drought impacts – environmental and socio-economic without any meaningful increased risk to fish.

Feel free to call if you should have any questions. Have fun!

Best,
ara

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]

Sent: Monday, May 11, 2015 11:57 AM

To: Ara Azhderian; 'David Bernhardt'

Cc: Wong, Bryson

Subject: Help on the water losses associated with Smelt

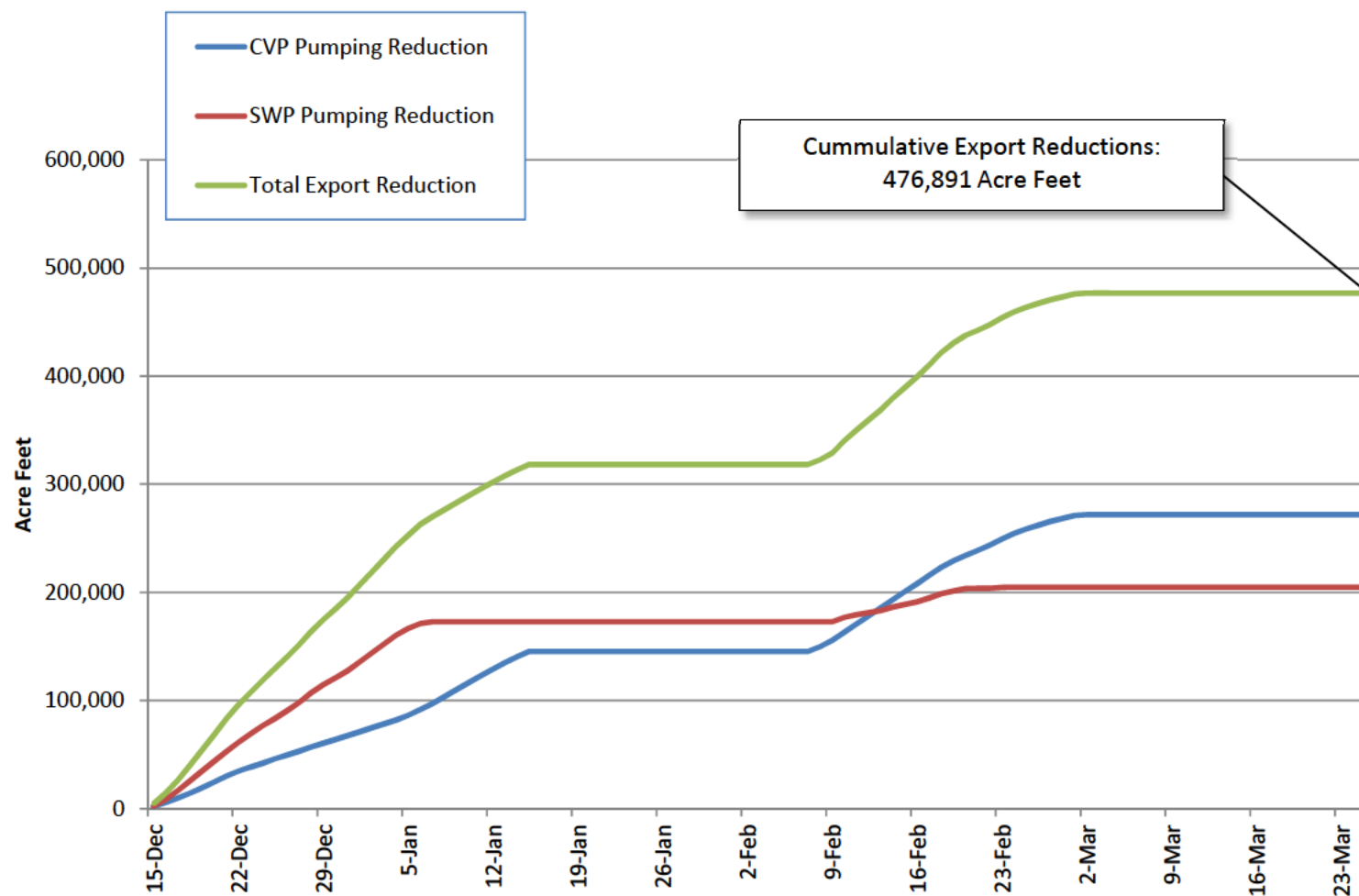
Ara and David,

We need some help quantifying water losses during the current drought associated with the delta smelt bi-op. Chairman Bishop asked for this so we are scrambling. If you listen to Jared Huffman, there are very little losses associated with the smelt, however as we know smelt and other environmental mandates took away water over the last two or three years. Those water losses have contributed to the situation we are in today. We just need numbers to prove that. Do you have anything you can send us asap?

*Kiel Weaver
Staff Director*

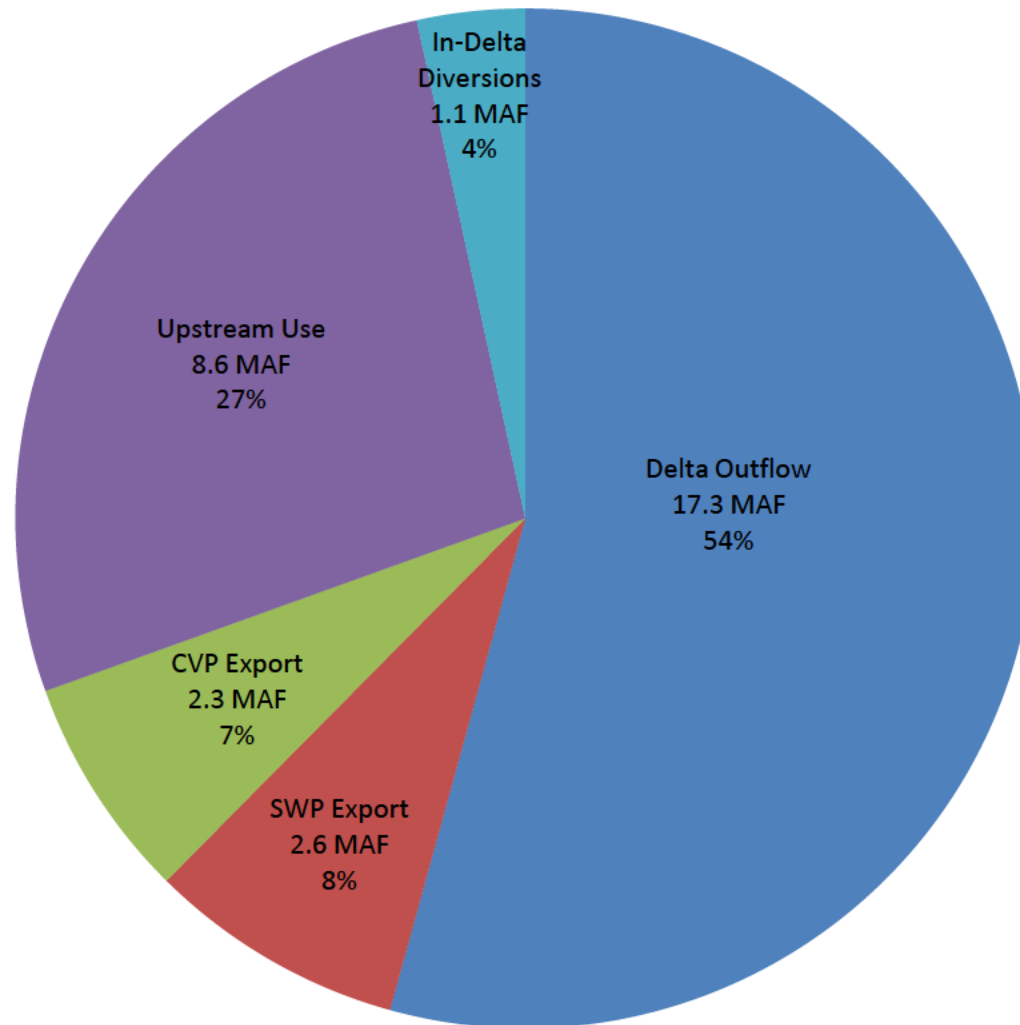
House Water, Power and Oceans Subcommittee
1522 Longworth HOB
Washington, DC 20515
kiel.weaver@mail.house.gov
202-███-████

2015 Cumulative Water Supply Impacts Due to ESA-Related Restrictions



Tributary Flows to the Delta (1992-2014)

How The Water Was Used



Data Sources

Upstream Use:

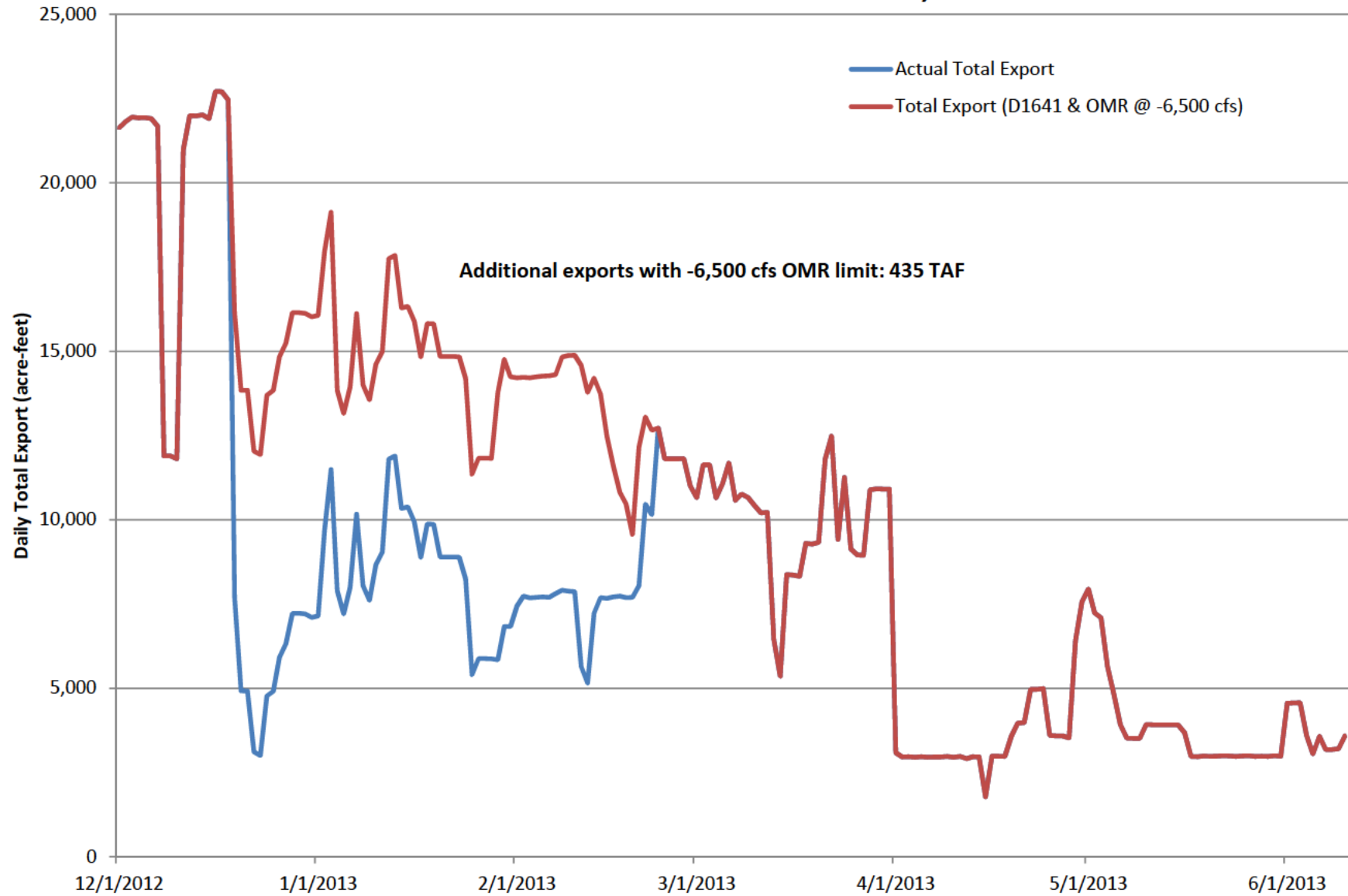
1992-2006 derived from California Central Valley Groundwater-Surface Water Simulation model - Run 321 (Historical) plus diversion data for Hetch Hetchy, East Bay Municipal Utility District, and Friant Contractors
2007-2014 estimated based on Sacramento Valley year type 1983-2006.

Delta Outflow, Exports, In-Delta Diversions:

California Department of Water Resources, Dayflow Program.
www.water.ca.gov/dayflow/output

MAF - Millions of Acre-Feet

2013 Total Exports (Dec-Jun) Actual OMR Restrictions vs OMR at -6,500 cfs



From: Ara Azhderian
Sent: Monday, May 11, 2015 2:35 PM
To: Wong, Bryson
CC: Jason Peltier; 'David Bernhardt'; Weaver, Kiel
Subject: RE: Help on the water losses associated with Smelt
Attachments: 2013 OCAP BiOp Impacts Tally.pdf

Hi Bryson,

Good chatting with you. Attached is the cumulative ESA water cost for 2012-13.

Don't hesitate to call if you should have any other questions.

Best,
ara

From: Ara Azhderian
Sent: Monday, May 11, 2015 1:23 PM
To: 'Weaver, Kiel'; 'David Bernhardt'
Cc: Wong, Bryson; Jason Peltier
Subject: RE: Help on the water losses associated with Smelt

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Best,
ara

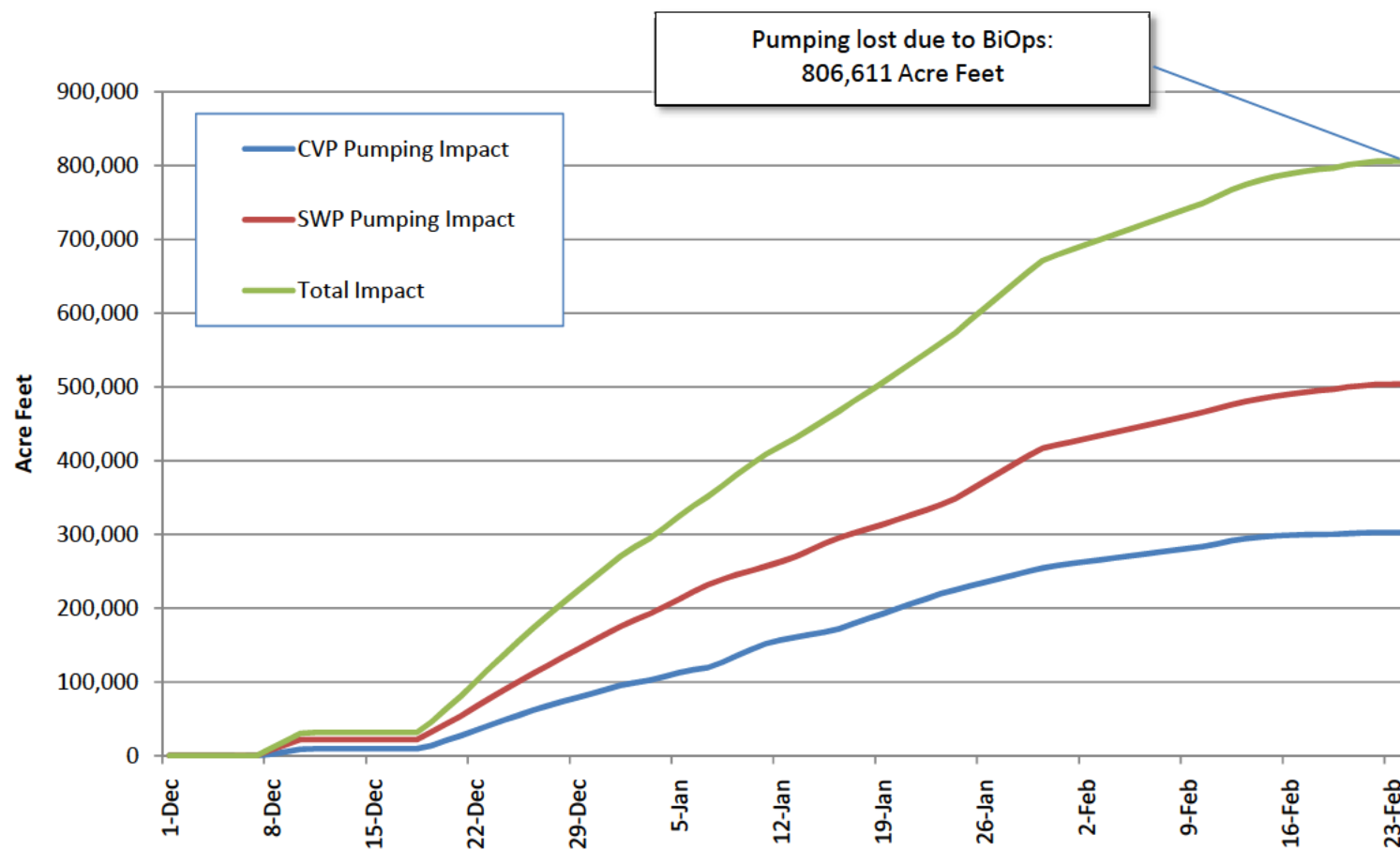
From: Weaver, Kiel [<mailto:Kiel.Weaver@mail.house.gov>]
Sent: Monday, May 11, 2015 11:57 AM
To: Ara Azhderian; 'David Bernhardt'
Cc: Wong, Bryson
Subject: Help on the water losses associated with Smelt

Ara and David,

We need some help quantifying water losses during the current drought associated with the delta smelt bi-op. Chairman Bishop asked for this so we are scrambling. If you listen to Jared Huffman, there are very little losses associated with the smelt, however as we know smelt and other environmental mandates took away water over the last two or three years. Those water losses have contributed to the situation we are in today. We just need numbers to prove that. Do you have anything you can send us asap?

*Kiel Weaver
Staff Director
House Water, Power and Oceans Subcommittee
1522 Longworth HOB
Washington, DC 20515
kiel.weaver@mail.house.gov
202-■■■■■■■■■■*

2013 Cumulative Water Supply Impacts From Biological Opinion Restrictions



From: Tom Birmingham
Sent: Tuesday, May 12, 2015 9:00 AM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: RE:

John,

In follow up to our discussion last night, I drafted the following:

(a) Except as provided in section 105(d)(2), in implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate under Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid additional adverse impacts beyond those contemplated under operations of the Central Valley Project and State Water Project consistent with the Reasonable and Prudent Alternative described by the smelt biological opinion.

Please check to ensure that it is section 105(d)(2) of the current draft that deals with operations during the “first flush.” And call if you have any questions.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]
Sent: Monday, May 11, 2015 3:16 PM
To: Tom Birmingham
Subject: RE: RE:

Good point. But to make that clear in the text, it probably should say “less negative than the highest negative reverse flow rate applicable under RPA Component 1 and Component 2.....” Does that work for you?

Your other edit is fine with me.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Monday, May 11, 2015 5:47 PM
To: Watts, John (Feinstein)
Subject: RE:

John,

I do not think that this language needs to change. If FWS is correct that during the first flush, the RPA requires reverse flow that on average is no more negative than -2000, nothing in the language would change that. The language states, “rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate under the biological opinion, . . .” So if under Action 1 of Component one, the highest negative reverse flow rate under the biological opinion is -2000 cfs, that is what this language would require.

Please note one change I made to your new language.

Tom

From: Watts, John (Feinstein) [mailto:John_Watts@feinstein.senate.gov]

Sent: Monday, May 11, 2015 2:36 PM

To: tbirmingham@westlandswater.org

Subject: FW:

(a) In implementing the provisions of the smelt biological opinion, or any successor biological opinion, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall not restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the highest negative reverse flow rate **applicable under** Reasonable and Prudent Alternative Component 1 and Component 2 absent a determination based on current scientific data that a less negative reverse flow rate is reasonably required to avoid **additional** adverse impacts beyond those **contemplated from the operations of the Central Valley Project and State Water Project consistent with the Reasonable and Prudent Alternative described by the smelt biological opinion..**

From: joe.findaro@akerman.com
Sent: Wednesday, May 13, 2015 1:03 PM
To: jamaral@westlandswater.org
Subject: Fwd: Greenwire, 5/12/15, LOBBYING: Former EPW chief counsel joins American Chemistry Council

Begin forwarded message:

From: "Findaro, Joe (OC-DC)" <joe.findaro@akerman.com>
Date: May 13, 2015 at 3:55:10 PM EDT
To: Thomas Birmingham <TBirmingham@westlandswater.org>, 'Don Peracchi' <dperacchi@westlandswater.org>, Denny Rehberg <drehberg@mercuryllc.com>, Craig Manson <cmanson@westlandswater.org>, 'Sarah Clark Woolf' <swoolf@westlandswater.org>, Jason Peltier <jpeltier@westlandswater.org>, Ed Manning <emanning@ka-pow.com>, Catherine Karen <ckaren@Sidley.com>, David Bernhardt <dbernhardt@bhfs.com>, Gayle Holman <gholman@westlandswater.org>, Phil Williams <pwilliams@westlandswater.org>, Dennis Cardoza <dcardoza@foley.com>
Subject: Fwd: Greenwire, 5/12/15, LOBBYING: Former EPW chief counsel joins American Chemistry Council

Bryan Zumwalt working with Cal Dooley now

LOBBYING: Former EPW chief counsel joins American Chemistry Council

Sam Pearson, E&E reporter

Published: Tuesday, May 12, 2015

A top legal aide to Sen. David Vitter (R-La.) during the time he crafted a bipartisan bill to update federal regulation of toxic chemicals has joined the chemical industry's leading trade group.

Bryan Zumwalt, the former chief counsel on the Environment and Public Works Committee and recently the chief counsel to the Small Business and Entrepreneurship Committee, joined the American Chemistry Council last month as its vice president for federal affairs, which means he's responsible for overseeing lobbying efforts.

People: Comings and Goings

Zumwalt is helping ACC on Toxic Substances Control Act issues in the House but faces a one-year ban from lobbying his former colleagues in the Senate, ACC spokeswoman Anne Kolton said.

Zumwalt is a graduate of the University of Idaho and the Case Western Reserve University School of Law, according to the Capitol Hill monitoring service Legistorm.

He was EPW's top legal staffer as Vitter negotiated on a 2013 bill, the "Chemical Safety Improvement Act," and later negotiations that led to S. 697, the "Frank R. Lautenberg Chemical Safety for the 21st Century Act."

The latest bill has repeatedly been criticized by Sen. Barbara Boxer (D-Calif.) and others as being written by ACC. However, Udall and other senators have said that ACC and other industry groups did not write the bill and did not have an outsized influence in the process (E&E Daily, April 22).

Zumwalt stands to significantly increase his salary by moving to ACC. The previous vice president of federal affairs for ACC, Walter Moore, earned \$447,113 in base compensation in 2013, according to tax forms the trade association filed with the Internal Revenue Service. Zumwalt earned about \$160,000 last year from his work on EPW, according to Senate records.

Moore recently retired after five years at the trade group, Kolton said.

Zumwalt worked at the National Marine Manufacturers Association before joining Vitter's office in 2009 as staff director on the Transportation and Infrastructure Subcommittee.

In 2012, Zumwalt became the chief counsel on EPW, where Vitter served as ranking member. This year, Zumwalt moved to the same post at the Senate Small Business and Entrepreneurship Committee, one of several Vitter staffers to follow him there (E&E Daily, Dec. 16, 2014).

Vitter took over the chairman post at the Small Business Committee in January, while Sen. James Inhofe (R-Okla.) became EPW chairman. Vitter also continues to serve on that committee.

Inhofe replaced Zumwalt with Susan Bodine, a partner at the Barnes and Thornburg law firm and a former U.S. EPA assistant administrator.

[vCard](#) | [Bio](#)



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From: Jason Peltier

Sent: Wednesday, May 13, 2015 10:12 PM

To: Dennis Cardoza; Joe Findaro; David Bernhardt

CC: Tom Birmingham; Dan Nelson; Ara Azhderian

Subject: Loretta Sanchez announcement back on for Thursday | The Sacramento Bee

<http://www.sacbee.com/news/politics-government/capitol-alert/article20855652.html>

From: Tom Birmingham
Sent: Friday, May 15, 2015 2:07 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Cross Channel Gates

John,

I suggest the following:

(a) In general- The applicable Secretary shall--

- (1) For the duration of the drought emergency, the Secretaries shall in close coordination with the California Department of Water Resources and the California Department of Fish and Wildlife evaluate through a pilot study or other means the ability to operate the Delta Cross Channel Gates diurnally or as otherwise may be suitable to protect out-migrating salmon, manage salinities in the Interior Delta, and enable Central Valley Project and State Water Project pumping. The Secretaries shall design, implement and evaluate such real time monitoring capabilities in the vicinity of the Delta Cross Channel to enable more effective real time operations of the Delta Cross Channel in order to meet these multiple objectives efficiency. Such a pilot project shall be designed and implemented in a manner that is consistent with the operational criteria and monitoring set forth in the California State Water Resources Control Board's Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions, effective January 31, 2014, or a successor order;

From: Tom Birmingham
Sent: Friday, May 15, 2015 2:37 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: RE: Cross Channel Gates

John,

Please note that I deleted the reference to the California Endangered Species Act in this language.

Tom

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, May 15, 2015 2:07 PM
To: 'Watts, John (Feinstein)'
Cc: 'Bernhardt, David L.'
Subject: Cross Channel Gates

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From: Jason Peltier

Sent: Monday, May 18, 2015 10:45 PM

To: Tom Birmingham; Dan Nelson <Dan.Nelson@sldmwa.org>; Ara Azhderian; S Ramos; James Watson; Dennis Cardoza; Joe Findaro; David Bernhardt; Ed Manning; Carolyn Jensen

Subject: Drought could spell trouble for California Democrats | The Sacramento Bee

<http://www.sacbee.com/news/politics-government/capitol-alert/article21247206.html>

From: Tom Birmingham
Sent: Thursday, May 21, 2015 5:13 PM
To: 'Nelson, Damon'
CC: 'Bernhardt, David L.'
Subject: Draft
Attachments: CA Water Draft.doc

Damon,
Attached is a draft. Please call me in the morning to discuss the proposed amendments.
Tom

Title: To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Drought Relief Act of 201~~5~~⁴”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Findings.

Sec.3.Definitions.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec.101.Definitions.

Sec.102.Revise incidental take level calculation to reflect new science.

Sec.103.Factoring increased real-time monitoring and updated science into Delta smelt management.

TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

Sec.201.Definitions.

Sec.202.Required scientific studies.

Sec.203.Process for ensuring salmonid management is responsive to new science.

Sec.204.Pilot program to protect native anadromous fish in the Stanislaus River.

Sec.205.CALFED invasive species pilot projects in the Sacramento-San Joaquin Bay Delta and its tributaries.

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

Sec.301.Findings.

Sec.302.Definitions.

Sec.303.Operational flexibility in times of drought.

Sec.304.Operation of cross-channel gates.

Sec.305.Flexibility for export/inflow ratio.

Sec.306.Emergency environmental reviews.

Sec.307.Increased flexibility for regular project operations.

Sec.308.Temporary operational flexibility for first few storms of the water year.

Sec.309.Expediting water transfers.

Updated 5-1-15

Sec. 310. Additional Emergency Consultation

Sec. 311. New Melones Transfer

Sec. 312. ESA Applicants

TITLE IV—INCREASING WATER STORAGE

Sec.401. CALFED STORAGE FEASIBILITY STUDIES

Sec.402. Temperance Flat

Sec. 403. Calfed Storage Accountability

Sec.404. Water storage project construction

Sec.405. Dam safety projects with increased storage component.

TITLE V—WATER RIGHTS PROTECTIONS

Sec.501. Protections for State water project contractors.

Sec.502. Area of origin protections.

Sec.503. No redirected adverse impacts.

Sec.504. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS

Sec. 505. Effect on Existing Obligations

TITLE VI—MISCELLANEOUS

Sec.601. Authorized service area.

Sec.602. Oversight board for Restoration Fund.

Sec.603.I. Water Supply Accounting

Sec. 604. Implementation of Water Replacement Plan

Sec. 605. Natural and Artificially Spawned Species

Sec. 606. Amendment to Purposes

Sec. 607. Amendment to Definitions

Title VII. REGULATORY STREAMLINING AND WATER RIGHTS.

Sec. 701. Permitting Efficiencies

Sec. 702. Payment of Certain Repayment Contracts

Sec. 703. Bureau of Reclamation Surface Water Storage Streamlining

Sec. 704. Environmental Procedures Streamlining

Sec. 705 Water Rights Protections

Section 2. Findings

Congress finds that—

(1) Data on the difference between water demand and reliable water supplies for various regions of California that are south of the Delta, including the San Joaquin Valley, indicate there is a significant annual gap between reliable water supplies to meet agricultural, municipal and industrial, groundwater, and refuges water needs within the South of Delta Division, the San Luis Unit, and the Friant Division of the Central Valley Project and the State Water Project service area south of the Sacramento-San Joaquin River Delta and north of the Tehachapi mountain range and the demands of those areas. This gap varies depending on the methodology of the analysis performed, but can be represented in the following ways:

(A) For Central Valley Project South-of-Delta water service contractors, if it is assumed that a water supply deficit is the difference in the amount of water available for allocation versus the maximum contract quantity, then the water supply deficits that have developed from 1992 to 2014 as a result of legislative and regulatory changes besides natural variations in hydrology during this timeframe range between 720,000 and 1,100,000 acre-feet.

(B) For Central Valley Project and State Water Project water service contractors south of the Delta and north of the Tehachapi mountain range, if it is assumed that a water supply deficit is the difference between reliable water supplies, including maximum water contract deliveries, safe yield of groundwater, safe yield of local and surface supplies and long-term contracted water transfers, and water demands, including water demands from agriculture, municipal and industrial and refuge contractors, then the water supply deficit ranges between approximately 2,500,000 to 2,700,000 acre-feet.

(B) .

(2) Data of pumping activities at the Central Valley Project and State Water Project delta pumps identifies that, on average from Water Year 2009 to Water Year 2014, take of Delta smelt is 80 percent less than allowable take levels under the biological opinion issued December 15, 2008.

(3) Data of field sampling activities of the Interagency Ecological Program located in the Sacramento-San Joaquin Estuary identifies that, on average from 2005 to 2013, the program “takes” 3,500 delta smelt during annual surveys with an authorized “take” level of 33,480 delta smelt annually – according to the biological opinion issued December 9, 1997.

(4) It is worth exploring whether there is a way to implement the biological opinions that would preserve the protections afforded listed fish and simultaneously increase water deliveries to the Central Valley Project and State Water Project without weakening environmental laws or protections.

(5) In 2014, better information exists than was known in 2008 concerning conditions and operations that may or may not lead to high salvage events that jeopardize the fish populations, and what alternative management actions can be taken to avoid jeopardy.

(6) Alternative management strategies, such as trapping and barging juvenile salmon through the Delta, removing non-native species, enhancing habitat, monitoring fish movement and location in real-time, and improving water quality in the Delta can contribute significantly to protecting and recovering these endangered fish species, and at potentially lower costs to water supplies.

(7) Resolution of fundamental policy questions concerning the extent to which application of the Endangered Species Act affects the operation of the Central Valley Project and State Water Project is the

responsibility of Congress.

SEC. 3. DEFINITIONS.

In this Act:

(1) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh, as defined in sections 12220 and 29101 of the California Public Resources Code.

(2) Export Pumping Rates.—The term “export pumping rates” means the rates of pumping at the C.W. “Bill” Jones Pumping Plant and the Harvey O. Banks Pumping Plant, in the southern Delta.

(3) LISTED FISH SPECIES.—The term “listed fish species” means listed salmonid species and the Delta smelt.

(4) LISTED SALMONID SPECIES.—The term “listed salmonid species” means natural origin steelhead, natural origin genetic spring run Chinook, and genetic winter run Chinook salmon including hatchery steelhead or salmon populations within the evolutionary significant unit (ESU) or distinct population segment (DPS).

(5) NEGATIVE IMPACT ON THE LONG-TERM SURVIVAL.—The term “negative impact on the long-term survival” means to reduce appreciably the likelihood of the survival of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

(6) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(7) OMR FLOW OF -5000 CFS.—The term “OMR flow of -5000 cfs” means Old and Middle River flow of negative 5,000 cubic feet per second as described in —

(A) the smelt biological opinion; and

(B) the salmonid biological opinion.

(8) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the biological opinion issued by the National Marine Fisheries Service on June 4, 2009.

(9) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion on the Long-Term Operational Criteria and Plan for coordination of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service on December 15, 2008.

(10) STATE.—The term “State” means the State of California.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

SEC. 101. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(2) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 102. REVISE INCIDENTAL TAKE LEVEL CALCULATION FOR DELTA SMELT TO REFLECT NEW SCIENCE.

(a) No later than October 1, 2016, and at least every five years thereafter, the Director of Fish and Wildlife Service, in cooperation with other federal, state, and local agencies, shall use the best scientific and commercial data available to complete a review and, modify the method used to calculate the incidental take levels for adult and larval/juvenile Delta smelt in the smelt biological opinion that takes into account all life stages, among other considerations,—

- (1) salvage information collected since at least 1993;
- (2) updated or more recently developed statistical models;
- (3) updated scientific and commercial data; and
- (4) the most recent information regarding the environmental factors affecting driving Delta smelt salvage.

(b) Modified Incidental Take Level.—Unless the Director determines in writing that one or more of the requirements described in paragraphs (1) through (4) below are not appropriate, the modified incidental take level described in subsection (a) shall—

- (1) Be normalized for the abundance of prespawning adult Delta smelt using the Fall Midwater Trawl Index or other index;
- (2) Be based on a simulation of the salvage that would have occurred from 1993 through 2012 if OMR flow has been consistent with the smelt biological opinions;
- (3) Base the simulation on a correlation between annual salvage rates and historic water clarity and OMR flow during the adult salvage period; and
- (4) Set the incidental take level as the 80 percent upper prediction interval derived from simulated salvage rates since at least 1993;

SEC. 103. FACTORING INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE INTO DELTA SMELT MANAGEMENT.

(a) In General.—The Director shall use the best scientific and commercial data available to implement, continuously evaluate, and refine or amend, as appropriate, the reasonable and prudent alternative described in the smelt biological opinion, and any successor opinions or court order. The Secretary shall make all significant decisions that implement under the smelt biological opinion, or any successor opinions, that affect Central Valley Project and State Water Project operations in writing, and shall document the significant facts upon which such decisions are made, consistent with Section 706 of Title 5 of the United States Code.

(b) Increased Monitoring to Inform Real-time Operations— The Secretary shall conduct additional surveys, on an annual basis at the appropriate time of the year based on environmental conditions, in collaboration with other Delta science interests.

- (1) In implementing this section, the Secretary shall —

(A) use the most accurate survey methods available for the detection of Delta smelt to determine the extent that adult Delta smelt are distributed in relation to certain levels of turbidity, or other environmental factors that may influence salvage rate; and

(B) use results from appropriate survey methods for the detection of Delta smelt to determine how the Central Valley Project and State Water Project may be operated more efficiently to minimize salvage while maximizing export pumping rates without causing a significant negative impact on the long term survival of the Delta smelt.

(2) During the period beginning on December 1, 2015 and ending March 31, 2016, and in each successive December through March period, if suspended sediment loads enter the Delta from the Sacramento River and the suspended sediment loads appear likely to raise turbidity levels in Old River north of the export pumps from values below 12 Nephelometric Turbidity Units (NTU) to values above 12 NTU, the Secretary shall—

(A) conduct daily monitoring using appropriate survey methods at locations including, but not limited to, the vicinity of Station 902 to determine the extent that adult Delta smelt are moving with turbidity toward the export pumps; and

(B) use results from the monitoring surveys referenced in paragraph (A) to determine how increased trawling can inform daily real-time Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates without causing a significant negative impact on the long-term survival of the Delta smelt.

(c) Periodic Review of Monitoring.—Within twelve months of the date of enactment of this title, and at least once every 5 years thereafter, the Secretary shall—

(1) evaluate whether the monitoring program under subsection (b), combined with other monitoring programs for the Delta, is providing sufficient data to inform Central Valley Project and State Water Project operations to minimize salvage while maximizing export pumping rates without causing a significant negative impact on the long-term survival of the Delta smelt; and

(2) determine whether the monitoring efforts should be changed in the short- or long-term to provide more useful data.

(d) Delta Smelt Distribution Study.—

(1) IN GENERAL.—No later than January 1, 2016, and at least every five years thereafter, the Secretary, in collaboration with the California Department of Fish and Wildlife, the California Department of Water Resources, public water agencies, and other interested entities, shall implement new targeted sampling and monitoring specifically designed to understand Delta smelt abundance, distribution, and the types of habitat occupied by Delta smelt during all life stages.

(2) SAMPLING.—The Delta smelt distribution study shall, at a minimum—

(A) include recording water quality and tidal data;

(B) be designed to understand Delta smelt abundance, distribution, habitat use, and movement throughout the Delta, Suisun Marsh, and other areas occupied by the Delta smelt during all seasons;

(C) consider areas not routinely sampled by existing monitoring programs, including wetland channels, near-shore water, depths below 35 feet, and shallow-water; and

(D) use survey methods, including sampling gear, best suited to collect the most accurate data for the type of sampling or monitoring.

(e) Scientifically supported implementation of Old and Middle River flow requirements.—In implementing the provisions of the smelt biological opinion, or any successor biological opinion or court order, pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall—

(1) consider the relevant provisions of the biological opinion or any successor biological opinion;

(2) ~~manage reverse flow in Old and Middle Rivers as prescribed by the smelt biological opinion, or any successor biological opinion or court order, to maximize water supply for the Central Valley Project and the State Water Project~~ water supplies, manage export pumping rates to achieve a reverse flow rate in Old and Middle Rivers of -5,000 cubic feet per second ~~is~~ unless information developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude that a less negative OMR flow rate ~~are is~~ necessary to avoid a ~~significant~~ negative impact on the long-term survival of the Delta smelt. ~~Water supplies for the Central Valley Project and the State Water Project may be increased if~~ information available to the Secretary indicates that a pumping levels reverse flow rate in Old and Middle Rivers more negative than -5,000 cubic feet per second can be established without an imminent ~~and significant~~ negative impact on the long-term survival of the Delta smelt. the Secretary shall manage export pumping rates to achieve that more negative OMR flow rate;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of reverse OMR flow rates, including—

(A) whether targeted real-time fish monitoring in Old River pursuant to this section, including monitoring in the vicinity of Station 902, indicates that a ~~significant~~ negative impact on the long-term survival of the Delta smelt is imminent; and

(B) whether near-term forecasts with available salvage models show under prevailing conditions that OMR flow of -5000 cubic feet per second or higher will cause a ~~significant~~ negative impact on the long-term survival of the Delta smelt; and

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5000 cubic feet per second is necessary to avoid a ~~significant~~ negative impact on the long-term survival of the Delta smelt, including an explanation of the data examined and the connection between those data and the choice made, after considering:

(A) ~~the distribution of Delta smelt throughout the Delta; whether continued project operations over the remainder of the water year would exceed the incidental take level;~~

(B) the potential effects of documented, quantified entrainment on subsequent Delta smelt abundance; ~~including consideration of the distribution of the population throughout the Delta;~~

(C) the water temperature; ~~;~~

(D) other significant factors relevant to the determination; and

(E) whether any alternative measures could have a substantially lesser water supply impact.

(45) for any subsequent biological opinion, make the showing required in paragraph (45) for any determination to manage ~~OMR~~ reverse flow in Old and Middle Rivers at rates less negative than the most negative upper limit in the biological opinion if the most negative upper limit in the biological opinion is more negative than -5,000 cubic feet per second.

(f) Memorandum of Understanding. No later than December 1, 2016, the Commissioner and the Director will execute a Memorandum of Understanding (MOU) to ensure that the smelt biological opinion is implemented in a manner that maximizes water supply while complying with applicable laws and regulations. If that MOU alters any procedures set out in the biological opinion, there will be no need to reinstitute consultation if those changes will do not have a ~~significant~~ negative impact on the long-term survival on listed species and the implementation of the MOU would not be a major change to implementation of the biological opinion. Any change to procedures that does not create a ~~significant~~ negative impact on the long-term survival to listed species will not alter application of the take permitted by the incidental take statement in the biological opinion under the Endangered Species Act, section 7(o)(2).

(g) Calculation of Reverse Flow in OMR.-Within 90 days of the enactment of this title, the Secretary is directed, in consultation with the California Department of Water Resources, to revise the method used to calculate reverse flow in Old and Middle Rivers for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion, and any succeeding biological opinions, for the purpose of increasing Central Valley Project and State Water Project water supplies. The method of calculating reverse flow in Old and Middle Rivers shall be reevaluated not less than every five years thereafter to achieve maximum export pumping rates within limits established by the smelt biological opinion, the salmonid biological opinion, and any succeeding biological opinions.

TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator of NOAA Fisheries.

(2) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(3) Other Affected Interests. — The term “other affected interests” means the State of California, subdivisions of the State of California, Indian tribes, public water agencies and those who benefit directly and indirectly from the operations of the Central Valley Project and the State Water Project.

(4) Commissioner.—The term “Commissioner” means the Commissioner of the Bureau of Reclamation.

(5) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

SEC. 202. REQUIRED SCIENTIFIC STUDIES.

(a) Trap and Barge Pilot Project to Increase Survivals Through the Delta.—The Assistant Administrator and the Commissioner shall, in collaboration with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, ~~public water agencies, and other affected interests, interested parties,~~ design, permit, implement and evaluate a pilot program to test the efficacy of an experimental trap and barge program to improve survival of juvenile salmonids emigrating from the San Joaquin watershed through the Delta, as further described below.

(1) Within 30 days of enactment, the Assistant Administrator shall convene a working group of the relevant agencies and other ~~affected interests-interested parties~~ through which to develop and execute a plan for the design, budgeting, implementation and evaluation of such a pilot program, utilizing existing expertise on such trap and barge programs as may be available. Such plan shall detail a schedule and budget for the program, and identify the responsible parties for each element of the program.

(2) The Assistant Administrator shall provide an opportunity for 30 days of public review and comment on the pilot program and also simultaneously seek an expeditious independent peer review of the program to improve its rigor and likelihood of success.

(3) Within 60 days of completion of (2), above, the Assistant Administrator shall complete the necessary design and evaluations of the pilot program and seek such permits or other regulatory authorizations as may be required under federal law for its prompt implementation and evaluation by the Assistant Administrator, the Commissioner or such other parties as they determine most suitable.

(4) The Assistant Administrator and the Commissioner shall seek to commence implementation of the pilot program in 201~~6~~⁵ or as soon thereafter as is possible, and shall conduct such pilot for such period of time as needed to evaluate the efficacy of the program to improve survivals across a range of environmental conditions.

(5) The Assistant Administrator and the Commissioner shall jointly report annually to the Senate Environment and Public Works Committee and the House Committee on Natural Resources their progress in implementing this section, estimated survival rates through the Delta for both juvenile salmonids that were barged through the Delta and those that were not barged, and if survival rates are significantly higher for barged fish as compared to other outmigrating smolts, the Assistant Administrator's and Commissioner's recommendations regarding broadening the pilot program and any relevant recommendations pursuant to section 203.

(6) The pilot program is hereby found to be consistent with the requirements of the Central Valley Project Improvement Act (Public Law 102-575). No provision, plan or definition established or required by the Central Valley Project Improvement Act (Public Law 102-575) shall be used to prohibit the imposition of the pilot program, or to prevent the accomplishment of its goals.

(b) Tagging studies.

(1) IN GENERAL.—The Assistant Administrator, in collaboration with the Interagency Ecological Program and other ~~affected interests, Delta science partners,~~ shall implement tagging studies, including acoustic telemetry and passive integrated transponder -PIT-tagging studies as appropriate, wherein habitat, predators, flow conditions, or other factors are experimentally altered and the behavior and survival of tagged juvenile salmonids are observed. Studies may also be conducted to aid in the understanding of Chinook salmon and steelhead abundance, distribution, and survival.

(2) SAMPLING.—The sampling—

(A) shall include recording water quality and tidal data;

(B) ~~shall will~~ be designed to aid in the understanding of salmonid abundance, distribution, and movements throughout the Bay Delta, including estimates of through Delta survival from Knights Landing or from Mossdale to Chipps Island; and

(C) ~~shall will~~ supplement, not supplant, ongoing acoustic tag and coded wire survival studies in the San Joaquin and Sacramento Rivers which the Assistant Administrator determines are crucial for trend monitoring.

(c) The Assistant Administrator shall accept and review recommendations from other affected interests, including Central Valley Project and State Water Project ~~service area water~~ contractors, on studies of other alternative management measures that may increase the survival of listed salmonid species.

SEC. 203. PROCESS FOR ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE.

(a) General directive. The reasonable and prudent alternative described in the salmonid biological opinion allows for and anticipates adjustments in Central Valley Project and State Water Project ~~project~~ operation parameters to reflect the best scientific and commercial data currently available, and authorizes efforts to test and evaluate improvements in operations that will meet applicable regulatory requirements and maximize Central Valley Project and State Water Project water supplies, ~~reliability~~. Implementation of the reasonable and prudent alternative described in the salmonid biological opinion shall be adjusted accordingly as new scientific and commercial data are developed. The Commissioner and the Assistant Administrator shall fully utilize these authorities as described below.

(b) Annual reviews of certain Central Valley Project and State Water Project ~~project~~ operations. No later than December 31, 2016, and at least annually thereafter,

(1) The Commissioner, with the assistance of the Assistant Administrator, shall examine and identify adjustments to the initiation of Action IV.2.3 as set forth in the Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project, Endangered Species Act Section & Consultation issued by the National Marine Fisheries Service on June 4, 2009 pertaining to negative OMR flows, subject to paragraph (5).

(2) The Commissioner, with the assistance of the Assistant Administrator, shall examine and identify adjustments in the timing, triggers or other operational details relating to the implementation of pumping restrictions in Action IV.2.1 pertaining to the inflow to export ratio, requirements, subject to paragraph (5).

(3) Pursuant to the consultation and assessments carried out under paragraphs (1) and (2) of this subsection, the Commissioner and the Assistant Administrator shall jointly make recommendations to the Secretary of the Interior and to the Secretary of Commerce on adjustments to project operations that, in the exercise of the adaptive management provisions of the salmonid biological opinion, will reduce water supply impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project and are consistent with the requirements of applicable law and as further described in subsection (c).

(4) The Secretary of Commerce and the Secretary of the Interior shall direct the Commissioner and Assistant Administrator to implement recommended adjustments to Central Valley Project and State Water Project ~~project~~ operations for which the conditions under subsection (c) are met.

(5) The Assistant Administrator and the Commissioner shall review and identify adjustments to Central Valley Project and State Water Project ~~project~~ operations with water supply restrictions in any successor biological opinion to the salmonid biological opinion, applying the provisions of this section to those water

supply restrictions where there are references to Actions IV.2.1 and IV.2.3.

(c) After reviewing the recommendations under subsection (b), the Secretary of the Interior and the Secretary of Commerce shall direct the Commissioner and the Assistant Administrator to implement those operational adjustments, or any combination, for which, in aggregate:

(1) the net effect on listed species is equivalent to those of the underlying project operational parameters in the salmonid biological opinion, taking into account both

(i) efforts to minimize the adverse effects of the adjustment to project operations; and

(ii) whatever additional actions or measures may be implemented in conjunction with the adjustments to operations to offset the adverse effects to listed species, consistent with (d), that are in excess of the adverse effects of the underlying operational parameters, if any; and

(2) the effects of the adjustment can be reasonably expected to fall within the incidental take authorizations.

(d)

(3)(d) When examining and identifying opportunities to offset the potential adverse effect of adjustments to operations under subsection (c)(1)(ii), the Commissioner and the Assistant Administrator shall take into account the potential species survival improvements that are likely to result from other measures which, if implemented in conjunction with such adjustments, would offset adverse effects, if any, of the adjustments. When evaluating offsetting measures, the Commissioner and the Assistant Administrator shall consider the type, timing and nature of the adverse effects, if any, to specific species and ensure that the measures likely provide equivalent overall benefits to the listed species in the aggregate, as long as the change will not cause a significant negative impact on the long-term survival of a listed salmonid species.

(e) Framework for examining opportunities to minimize or offset the potential adverse effect of adjustments to operations.—Not later than December 31, 2016⁶⁵, and every five years thereafter, the Assistant Administrator shall, in collaboration with the Director of the California Department of Fish and Wildlife, based on the best scientific and commercial data available and for each listed salmonid species, issue estimates of the increase in through-Delta survival the Secretary expects to be achieved—

(1) through restrictions on export pumping rates as specified by Action IV.2.3 as compared to limiting OMR flow to a fixed rate of 5000 cubic feet per second within the time period Action IV.2.3 is applicable, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(2) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1 as compared to the restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, based on a given rate of San Joaquin River inflow to the Delta and holding other relevant factors constant;

(3) through a trap and barge program based on the experience of other systems to the extent they are comparable, and the study described in section 202, as that information becomes available;

(4) through physical habitat restoration improvements;

(5) through predation control programs;

(6) through the installation of temporary barriers, the management of Cross Channel Gates operations, and other projects affecting flow in the Delta;

(7) through salvaging fish that have been entrained near the entrance to Clifton Court Forebay;

(8) through any other management measures that may provide equivalent or better protections for listed species while maximizing export pumping rates without causing a significant negative impact on the long-term survival of a listed salmonid species; and,

(9) through development and implementation of conservation hatchery programs for salmon and

steelhead to aid in the recovery of listed salmon and steelhead species.

(f) Survival estimates.

(1) To the maximum extent practicable, the Assistant Administrator shall make quantitative estimates of survival such as a range of percentage increases in through-Delta survival that could result from the management measures, and if the scientific information is lacking for quantitative estimates, shall do so on qualitative terms based upon the best available science.

(2) If the Assistant Administrator provides qualitative survival estimates for a species resulting from one or more management measures, the Secretary shall, to the maximum extent feasible, rank the management measures described in subsection (e) in terms of their most likely expected contribution to increased through-Delta survival relative to the other measures.

(3) If at the time the Assistant Administrator conducts the analysis under subsection (b), the Secretary has not issued an estimate of increased through-Delta survival from different management measures pursuant to subsection (e), the Secretary shall compare the protections to the species from different management measures based on the best scientific and commercial data available at the time.

(g) Comparison of adverse consequences for alternative management measures of equivalent protection for a species.—

(1) For the purposes of this subsection and subsection (c)—

(A) The alternative management measure or combination of alternative management measures identified in paragraph (2) shall be known as the “equivalent alternative measure.”

(B) The existing measure or measures identified in subparagraphs (2)(A),(B),(C), or (D) shall be known as the “equivalent existing measure.”

(C) An “equivalent increase in through-Delta survival rates for listed salmonid species” shall mean an increase in through-Delta survival rates that is equivalent when considering the change in through-Delta survival rates for the listed salmonid species in the aggregate, and not the same change for each individual species, as long as the change in survival rates will not cause a significant negative impact on the long-term survival of a listed salmonid species.

(2) As part of the reviews of project operations pursuant to subsection (b), the Assistant Administrator shall determine whether any alternative management measures or combination of alternative management measures listed in subsection (e)(3) through (8) would provide an increase in through-Delta survival rates for listed salmonid species that is equivalent to the increase in through-Delta survival rates for listed salmonid species from the following:

(A) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to limiting OMR flow to a fixed rate of -5000 cubic feet per second within the time period Action IV.2.3 is applicable;

(B) through restrictions on export pumping rates as specified by Action IV.2.3, as compared to a modification of Action IV.2.3 that would provide additional water supplies, other than that described in subparagraph (A);

(C) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to the restrictions in the April/May period imposed by the State Water Resources Control Board decision D-1641, or

(D) through San Joaquin River inflow to export restrictions on export pumping rates specified within Action IV.2.1, as compared to a modification of Action IV.2.1 that would reduce water supply

impacts of the salmonid biological opinion on the Central Valley Project and the California State Water Project, other than that described in subparagraph (C).

(3) If the Assistant Administrator identifies an equivalent alternative measure pursuant to paragraph (2), the Assistant Administrator shall determine whether

(A) it is technically feasible and within federal jurisdiction to implement the equivalent alternative measure

(B) the State of California, or subdivision thereof, or local agency with jurisdiction has certified in writing to the Assistant Administrator that it has the authority and capability to implement the pertinent equivalent alternative measure, or

(C) the adverse consequences of doing so are less than the adverse consequences of the equivalent existing measure, including a concise evaluation of the adverse consequences to other affected interests.

(4) If the Assistant Administrator makes the findings in subparagraph (3)(A) or (3)(B), the Commissioner shall adjust project operations to implement the equivalent alternative measure in place of the equivalent existing measure in order to increase export rates of pumping to the greatest extent possible while maintaining a net combined effect of equivalent through-Delta survival rates for the listed salmonid species.

(h) Tracking adverse effects beyond the range of effects accounted for in the salmonid biological opinion and coordinated operation with the smelt biological opinion.

(1) Among the adjustments to the project operations considered through the adaptive management process under this section, the Assistant Administrator and the Commissioner shall

(A) Evaluate the effects on listed salmonid species and water supply of the potential adjustment to operational criteria described in subparagraph (B); and

(B) Consider requiring that before some or all of the provisions of Actions IV.2.1. or IV.2.3 are imposed in any specific instance, the Assistant Administrator show that the implementation of these provisions in that specific instance is necessary to avoid a significant negative impact on the long-term survival of a listed salmonid species.

(2) The Assistant Administrator, the Director and the Commissioner, in coordination with State officials as appropriate, shall establish operational criteria to coordinate management of OMR flows under the smelt and salmonid biological opinions, in order to take advantage of opportunities to provide additional water supplies from the coordinated implementation of the biological opinions.

(3) The Assistant Administrator and the Commissioner shall document the effects of any adaptive management decisions related to the coordinated operation of the smelt and salmonid biological opinions that prioritizes the maintenance of one species at the expense of the other.

(i) Real-Time Monitoring and Management. Notwithstanding the calendar based triggers described in the salmonid biological opinion Reasonable and Prudent Alternative, operations of the Central Valley Project and the State Water Project shall not be the Reasonable and Prudent Alternative unless current monitoring data indicate that the actions described in the Reasonable and Prudent Alternative are reasonably required to avoid a negative impact on the long-term survival of a listed salmonid species. The Assistant Administrator and the Commissioner shall, through the NMFS adaptive management salmonid biological opinion provisions, analyze whether date certain triggers that limit OMR reverse flow to 5000 cubic feet per second could be adjusted to instead use real time migration information on salmonids. If the analysis shows that the use of real time information to trigger OMR flow limitations would improve water supply without causing a significant negative impact on the long-term survival of Winter-run Chinook salmon, then such real time management triggers shall be implemented.

- (j) If the quantitative estimates of through-Delta survival established by the Secretary for the management measures in (b)(2) exceed the through-Delta survival established for the RPAs, the Secretary shall evaluate and implement the management measures in (b)(2) as a prerequisite to implementing the RPAs contained in the BiOps.
- (k) Consistent with Section 706 of Title 5 of the United States Code, decisions of the Assistant Administrator and the Commissioner described in paragraphs (b) through (j) of Section 203 shall be made in writing, on the basis of best scientific and commercial data currently available, and shall include an explanation of the data examined and the connection between those data and the choice made, ~~document the significant facts upon which such decisions are made.~~

SEC. 204. PILOT PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN THE STANISLAUS RIVER.

(a) ESTABLISHMENT OF NONNATIVE PREDATOR FISH REMOVAL PILOT PROGRAM. —The Secretary of Commerce and the districts, in collaboration ~~consultation~~ with the United States Fish and Wildlife Service, shall jointly develop and conduct a nonnative predator fish removal pilot program to remove nonnative striped bass, smallmouth bass, largemouth bass, black bass, and other nonnative predator fishes species from the Stanislaus River, ~~California~~. The pilot program shall—

(1) be scientifically based;

(2) include methods to quantify the number and size of predator fishes removed each year, the impact of such removal on the overall abundance of predator fishes, and the impact of such removal on the populations of juvenile anadromous fish found in the Stanislaus River by, among other things, evaluating the number of juvenile anadromous fish that migrate past the rotary screw trap located at Caswell;

(3) among other methods, use wire fyke trapping, portable resistance board weirs, and boat electrofishing;

(4) be developed, including the application for all necessary scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the performance of the pilot program, not later than 6 months after the date of the enactment of this Act;

(5) be implemented as quickly as possible following the issuance of all necessary scientific research and species enhancement permits needed to begin the pilot program; and

(6) be implemented for a period of 7 consecutive calendar years.

(b) MANAGEMENT.—The management of the pilot program shall be the joint responsibility of the Secretary and the districts. Such parties shall work collaboratively to ensure the performance of the pilot program, and shall discuss and agree upon, among other things, changes in the structure, management, personnel, techniques, strategy, data collection, reporting, and conduct of the pilot program.

(c) CONDUCT.—

(1) IN GENERAL.—By agreement between the Secretary and the districts, the pilot program may be conducted by their own personnel, qualified private contractors hired by the districts, personnel of, on loan to, or otherwise assigned to the National Marine Fisheries Service, or a combination thereof.

(2) PARTICIPATION BY THE NATIONAL MARINE FISHERIES SERVICE.—If the districts elect to conduct the program using their own personnel or qualified private contractors hired by them in accordance with paragraph (1), the Secretary may assign an employee of, on loan to, or otherwise assigned to the National Marine Fisheries Service, to be present for all activities performed in the field.

Such presence shall ensure compliance with the agreed-upon elements specified in subsection (b). The districts shall pay the cost of such participation in accordance with subsection (d).

(3) **TIMING OF ELECTION.**—The districts shall notify the Secretary of their election on or before October 15 of each calendar year of the pilot program. Such an election shall apply to the work performed in the subsequent calendar year.

(d) **FUNDING.**—

(1) **IN GENERAL.**—The districts shall be responsible for 100 percent of the cost of the pilot program.

(2) **CONTRIBUTED FUNDS.**—The Secretary may accept and use contributions of funds from the districts to carry out activities under the pilot program.

(3) **ESTIMATION OF COST.**—On or before December 1 of each year of the pilot program, the Secretary shall submit to the districts an estimate of the cost to be incurred by the National Marine Fisheries Service for the pilot program in the following calendar year, if any, including the cost of any data collection and posting under subsection (e). If an amount equal to the estimate is not provided through contributions pursuant to paragraph (2) before December 31 of that year—

(A) the Secretary shall have no obligation to conduct the pilot program activities otherwise scheduled for such following calendar year until such amount is contributed by the districts; and

(B) the districts may not conduct any aspect of the pilot program until such amount is contributed by the districts.

(4) **ACCOUNTING.**—On or before September 1 of each year, the Secretary shall provide to the districts an accounting of the costs incurred by the Secretary for the pilot program in the preceding calendar year. If the amount contributed by the districts pursuant to paragraph (2) for that year was greater than the costs incurred by the Secretary, the Secretary shall—

(A) apply the excess contributions to costs of activities to be performed by the Secretary under the pilot program, if any, in the next calendar year; or

(B) if no such activities are to be performed, repay the excess contribution to the districts.

(e) **REPORTING AND EVALUATION.**—

(1) **IN GENERAL.**—On or before the 15th day of each month, the Secretary shall post on the Internet website of the National Marine Fisheries Service a tabular summary of the raw data collected under the pilot program in the preceding month.

(2) **REPORT.**—On or before June 30 of the year following the completion of the pilot program, the Secretary and the districts shall jointly submit for peer review a report that—

(A) discusses the findings and conclusions of the pilot program;

(B) synthesizes the data collected under paragraph (1); and

(C) makes recommendations for further study and action.

(f) **PERMITS PROCESS.**—

(1) **REQUIREMENT.**—Not later than 180 days after the filing by the Secretary and the districts of an application for scientific research and species enhancement permits under section 10(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)) for the pilot program, the Secretary of the Interior, the Secretary of Commerce, or both, as appropriate, shall issue to the National Marine Fisheries Service and the districts all such permits that are necessary for the performance of the pilot program. Each such permit shall authorize activities under the permits to be carried out by the districts and by the National Marine Fisheries Service.

(2) **DELEGATION OF AUTHORITY.**—The districts and the Secretary may delegate the authority to conduct activities under such permits to any qualified private contractor retained in accordance with subsection (c).

(3) **FAILURE TO ISSUE PERMITS.**—The pilot program, including amendments thereto by the appropriate Federal agencies, shall constitute a conservation plan that complies with section 10(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(2)) if the Secretaries have not carried out paragraph (1) within 270 days after the filing of an application in accordance with such paragraph.

(4) **TREATMENT OF STRIPED BASS.**—For purposes of the application of the Central Valley Project Improvement Act (title III of Public Law 102–575) with respect to the pilot program, striped bass shall not be treated as anadromous fish.

(g) **NEPA.**—

(1) **LIMITATION ON APPLICATION.**—If the Secretaries have not carried out subsection (f)(1) within 365 days after the filing by the Secretary of Commerce and the districts of an application referred to in that subsection, section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to this section and the issuance of any permit under this section, during the 7-year period beginning on the date of the submission of such application.

(2) **EMERGENCY ENVIRONMENTAL REVIEWS.**—The Secretary of the Interior and the Secretary of Commerce shall consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations) to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as necessary to expedite the benefits of the pilot program for the conservation of threatened species and endangered species.

(h) **DEFINITIONS.**—For the purposes of this section:

(1) **DISTRICTS.**—The term “districts” means the Oakdale Irrigation District and the South San Joaquin Irrigation District, California.

(2) **PILOT PROGRAM.**—The term “pilot program” means the nonnative predator fish removal pilot program established under this section.

(3) **SECRETARY OF COMMERCE.**—The term “Secretary of Commerce” means the Secretary of Commerce acting through the National Marine Fisheries Service.

(i) **STATE LAW PREEMPTED.**—

(1) **IN GENERAL.**—Any restriction imposed under California law on the catch, take, or harvest of any nonnative or introduced aquatic or terrestrial species that preys upon anadromous fish and that occupies or is found in the Stanislaus River, or the permitting thereof, is hereby void and is preempted.

(2) **STATE PERMITS NOT REQUIRED.**—Neither the districts nor the Secretaries are required to obtain a Scientific Collection Permit or any other permit or authorization from the California Department of Fish and Wildlife or any other division or instrumentality of the State of California pursuant to section 1002(a) of the California Fish and Game Code, section 5514(a) of the California Fish and Game Code, section 650 or title 14 of the California Code of Regulations, or any other provision of California law to implement any aspect of the pilot program.

(j) **SUNSET.**—The authorities provided under this section shall expire 7 years after date of the issuance of the permits referred to in subsection (f)(1).

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

SEC. 301. FINDINGS.

Congress finds that—

Updated 5-1-15

(1) Based on the congressional findings in Sec. 2 of this Act, it is appropriate and necessary for federal agencies to exercise the maximum amount of flexibility provided to them under the applicable laws and regulations to maximize delivery of water supplies while providing substantially similar levels of protection for listed species.

SEC. 302. DEFINITIONS.

In this title:

(1) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(2) RECLAMATION PROJECT.—The term “Reclamation Project” means a project constructed pursuant to the authorities of the reclamation laws and whose facilities are wholly or partially located in the State.

(3) SECRETARIES.—The term “Secretaries” means—

- (A) the Administrator of the Environmental Protection Agency;
- (B) the Secretary of Agriculture;
- (C) the Secretary of Commerce; and
- (D) the Secretary of the Interior.

(4) STATE WATER PROJECT.—The term “State Water Project” means the water project described by California Water Code section 11550 et seq., and operated by the California Department of Water Resources.

(5) State.—The term “State” means the State of California.

SEC. 303. OPERATIONAL FLEXIBILITY IN TIMES OF DROUGHT.

(a) Water Supplies.—

(1) IN GENERAL.— For the period of time such that in any year that the Sacramento Valley Index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, the Secretaries shall provide the maximum quantity of water supplies practicable to all individuals or district who receive Central Valley Project water under water service or repayments contracts, water rights settlement contracts, ~~or exchange contracts~~, or refuge contracts or agreements entered into prior to or after the date of enactment of this title; State Water Project contractors, and any other tribe, locality, water agency, or municipality in the State, by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as practicable based on available information to address the emergency conditions.

(b) Administration.—In carrying out subsection (a), the Secretaries shall, consistent with applicable laws (including regulations)—

(1) issue all necessary permit decisions under the authority of the Secretaries not later than 30 days after the date on which the Secretaries receive a completed application from the State to place and use temporary barriers or operable gates in Delta channels to improve water quantity and quality for the State Water Project and the Central Valley Project south of Delta water contractors and other water users, on the condition that the barriers or operable gates—

- (A) do not result in a significant negative impact on the long-term survival of listed species within the Delta and provide benefits or have a neutral impact on in-Delta water user water quality; and

(B) are designed so that formal consultations under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) are not necessary;

(2) require the Director of the United States Fish and Wildlife Service and the Commissioner of Reclamation—

(A) to complete, not later than 30 days after the date on which the Director or the Commissioner receives a complete written request for water transfer, all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on the request; and

(B) to approve any water transfer request described in subparagraph (A) to maximize the quantity of water supplies available for nonhabitat uses, on the condition that actions associated with the water transfer comply with applicable Federal laws (including regulations);

(3) adopt a 1:1 inflow to export ratio, as measured as a 3-day running average at Vernalis during the period beginning on April 1, and ending on May 31, absent a determination in writing that a more restrictive inflow to export ratio is required to avoid a ~~significant~~ negative impact on the long-term survival of a listed salmonid species; provided that the 1:1 inflow to export ratio shall apply for the increment of increased flow of the San Joaquin River resulting from the voluntary sale, transfers, or exchanges of water from agencies with rights to divert water from the San Joaquin River or its tributaries and provided that ~~Delta conditions are suitable to allow the~~ movement of the acquired, transferred, or exchanged water through the Delta consistent with the Central Valley Project's and the State Water Project's permitted water rights and provided that movement of the Central Valley Project water is consistent with the requirements of Section 3405(a)(1)(H) of the Central Valley Project Improvement Act.

(4) allow and facilitate, consistent with existing priorities, water transfers through the C.W. "Bill" Jones Pumping Plant or the Harvey O. Banks Pumping Plant from April 1 to November 30 provided water transfers comply with state law, including the California Environmental Quality Act.

(c) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.— On request by the Governor of the State, the heads of Federal agencies shall use the expedited procedures under this subsection to make final decisions relating to a Federal project or operation, or to local or State projects or operations that require decisions by the Secretary of the Interior or the Secretary of Commerce to provide additional water supplies if the project's or operation's purpose is to provide relief for emergency drought conditions pursuant to subsections (a) and (b).

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.— On request by the Governor of the State, the head of a Federal agency referenced in paragraph (1), or the head of another Federal agency responsible for carrying out a review of a project, as applicable, the Secretary of the Interior shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide relief for emergency drought conditions.

(B) MEETING.— The Secretary of the Interior shall convene a meeting requested under subparagraph (A) not later than 7 days after the date on which the meeting request is received.

(3) NOTIFICATION.— On receipt of a request for a meeting under paragraph (2), the Secretary of the Interior shall notify the heads of all relevant Federal agencies of the request, including information on the project to be reviewed and the date of the meeting.

(4) DECISION.— Not later than 10 days after the date on which a meeting is requested under paragraph (2), the head of the relevant Federal agency shall issue a final decision on the project, subject to subsection (e)(2).

(5) MEETING CONVENED BY SECRETARY.—The Secretary of the Interior may convene a final project decision meeting under this subsection at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under paragraph (2).

(d) Application.—To the extent that a Federal agency, other than the agencies headed by the Secretaries, has a role in approving projects described in subsections (a) and (b), this section shall apply to those Federal agencies.

(e) Limitation.—Nothing in this section authorizes the heads of applicable Federal agencies to approve projects—

- (1) that would otherwise require congressional authorization; or
- (2) without following procedures required by applicable law.

(f) Drought Plan. For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater. The Secretaries of Commerce and the Interior, in consultation with appropriate State officials, shall develop a drought operations plan that is consistent with the provisions of this Act including the provisions that are intended to provide additional water supplies that could be of assistance during the current drought.

SEC. 304. OPERATION OF CROSS-CHANNEL GATES.

(a) In General.—The Secretary of Commerce and the Secretary of the Interior shall jointly—

(1) authorize and implement activities to ensure that the Delta Cross Channel Gates remain open to the maximum extent practicable using findings from the United States Geological Survey on diurnal behavior of juvenile salmonids, timed to maximize the peak flood tide period and provide water supply and water quality benefits for the duration of the drought emergency declaration of the State, and for the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, consistent with operational criteria and monitoring criteria set forth into the Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions of the California State Water Resources Control Board, effective January 31, 2014 (or a successor order) and other authorizations associated with it;

(2) with respect to the operation of the Delta Cross Channel Gates described in paragraph (1), collect data on the impact of that operation on—

- (A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (B) water quality; and
- (C) water supply;

(3) consistent with knowledge gained from activities carried out during 2014 and 2015, collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough in coordination with Delta Cross Channel Gate diurnal operations to protect migrating salmonids;

(4) evaluate the combined salmonid survival in light of activities carried out pursuant to paragraphs (1) through (3) in deciding how to operate the Delta Cross Channel gates to enhance salmonid survival and water supply benefits; and

(5) not later than May 15, 2016, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a written report on the

extent to which the gates are able to remain open.

(b) Recommendations.—After assessing the information collected under subsection (a), the Secretary of the Interior shall recommend revisions to the operation of the Delta Cross-Channel Gates, to the Central Valley Project, and to the State Water Project, including, if appropriate, any reasonable and prudent alternative contained in the biological opinion issued by the National Marine Fisheries Service on June 4, 2009, that are likely to produce water supply benefits without causing a significant negative impact on the long-term survival of the listed species within the Delta or on water quality.

SEC. 305. FLEXIBILITY FOR EXPORT/INFLOW RATIO.

For the period of time such that in any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, the Commissioner of the Bureau of Reclamation shall continue to vary the averaging period of the Delta Export/Inflow ratio pursuant to the California State Water Resources Control Board decision D1641—

- (1) to operate to a 35 percent Export/Inflow ratio with a 3 day averaging period on the rising limb of a Delta inflow hydrograph; and
- (2) to operate to a 14 day averaging period on the falling limb of the Delta inflow hydrograph.

SEC. 306. EMERGENCY ENVIRONMENTAL REVIEWS.

(a) To minimize the time spent carrying out environmental reviews and to deliver water quickly that is needed to address emergency drought conditions in the State during the duration of an emergency drought declaration, the head of each applicable Federal agency shall, in carrying out this Act, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (including successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency. (b) For the purposes of this section, a Secretary may deem a project to be in compliance with all necessary environmental regulations and reviews if the Secretary determines that the immediate implementation of the project is necessary to address:

- (1) human health and safety; or
- (2) a specific and imminent loss of agriculture production upon which an identifiable region depends for 25 percent or more of its tax revenue used to support public services including schools, fire or police services, city or county health facilities, unemployment services or other associated social services.

SEC. 307. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.

(a+) The Secretaries shall, consistent with applicable laws (including regulations)—

(a1) help meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of water conservation measures, water conveyance facilities, and wells to use groundwater resources, on the condition that those activities may only be accomplished by using funding made available under the Water Assistance Program or Reclamation programs of the Department of the Interior; and

(2b) make available to individuals or districts who receive water from the United States under water rights settlement contracts, exchange contracts, water service or repayment contracts the additional water obtained from the activities carried out under subparagraph (1A);

(b2) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State and elsewhere;

(3c) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;

(4d) manage reverse flow in the Old and Middle Rivers at -6,100 cubic feet per second ~~if~~ if real-time monitoring indicates that flows of -6,100 cubic feet per second ~~is~~ or more negative can be established for specific periods without causing a ~~significant~~ negative impact on the long term survival of the Delta smelt, or if real-time monitoring does not support flows of -6,100 cubic feet per second ~~then is than~~ manage Old and Middle River flows at -5,000 cubic feet per second ~~is may be made subject~~ to Sections 103(e)(3) and (4);

(5e) as soon as practicable after the date of enactment of this Act and pursuant to existing authority available to the Secretary of the Interior, participate in, issue grants, or otherwise provide funding for pilot projects to increase water in reservoirs in regional river basins experiencing extreme, exceptional, or sustained drought that have a direct impact on the water supply of the State, including the Colorado River Basin, on the condition that any participation, grant, or funding by the Secretary of the Interior with respect to the Upper Division shall be with or to the respective State; and

(6f) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.

SEC. 308. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF THE WATER YEAR

(a) In general. Consistent with avoiding a significant negative impact on the long-term survival in the short-term upon listed fish species beyond the range of those authorized under the Endangered Species Act and other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative Old and Middle River flows at -7500 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for 56 consecutive days after October 1 as described in subsection (c).

(b) Days of temporary operational flexibility. The temporary operational flexibility described in subsection (b) shall be authorized on days that the California Department of Water Resources determines the daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freport gauge maintained by the United States Geologic Survey.

(c) Compliance with ESA authorizations. In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary

operational flexibility as they determine are reasonably necessary to avoid an additional significant negative impacts on the long-term survival of a listed fish species beyond the range of those authorized under the Endangered Species Act, provided that the requirements imposed do not reduce water supplies available for the Central Valley Project and the State Water Project.

(d) Other environmental protections.

(1) The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under state law;

(2) During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than - 5000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants;

(3) This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act. In addition to any other actions to benefit water supply, the Secretary and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period if they can be accomplished consistent with Section 3405(a)(1)(H) of the Central Valley Project Improvement Act. Water transfers solely or exclusively through the State Water Project are not required to be consistent with Section 3405(a)(1)(H) of the Central Valley Project Improvement Act.

(4) During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake a monitoring program and other data gathering to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act, 16 U.S.C. 1531-1544; and

(5) The Commissioner is authorized to take any action, including the transfer of appropriated funds between accounts that, in the Commissioner's judgment, are necessary to mitigate the impacts of such operations as long as any such mitigation is consistent with the requirements of this section.

(e) Technical adjustments to target period. If, before temporary operational flexibility has been implemented on 56 consecutive days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in Old and Middle River flows less negative than -7500 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 56 consecutive days specified in subsection (b).

(f) Emergency consultation: effect on running averages.

(1) If necessary to implement the provisions of this section, the Commissioner is authorized to take any action necessary to implement this section for up to 56 days. If during the 56 days the Commissioner determines that actions necessary to implement this section will exceed 56 days, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act and its implementing regulation at 50 CFR 402.05 to temporarily adjust the operating criteria under the biological opinions,

(A) solely for extending beyond the 56 consecutive days for additional days of temporary operational flexibility—

(i) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (d) and (e); and

(ii) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily Old and Middle River flow requirements under the biological opinions, or

(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.

(2) Following the conclusion of the 56 consecutive days of temporary operational flexibility, or the extended number of days covered by the emergency consultation procedures, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act. If the Commissioner reinitiates consultation, no mitigation measures shall be required.

(g) Level of detail required for analysis. In articulating the determinations required under this section, the Secretaries shall fully satisfy the requirements herein but shall not be expected to provide a greater level of supporting detail for the analysis than feasible to provide within the short time frame permitted for timely decision-making in response to changing conditions in the Delta.

SEC. 309. EXPEDITING WATER TRANSFERS.

(a) In General.—Section 3405(a) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4709(a)) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (4) through (6), respectively;

(2) in the matter preceding paragraph (4) (as so designated)—

(A) in the first sentence, by striking “In order to” and inserting the following:

“(1) IN GENERAL.—In order to”; and

(B) in the second sentence, by striking “Except as provided herein” and inserting the following:

“(3) TERMS.—Except as otherwise provided in this section”; and

(3) by inserting before paragraph (3) (as so designated) the following:

“(2) EXPEDITED TRANSFER OF WATER.—The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with—

“(A) this Act;

“(B) any other applicable provision of the reclamation laws; and

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) in paragraph (4) (as so designated)—

(A) in subparagraph (A), by striking “to combination” and inserting “or combination”; and

(B) by striking “3405(a)(2) of this title” each place it appears and inserting “(5)”; and

(5) in paragraph (5) (as so designated), by adding at the end the following:

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of the proposal. If the contracting district or agency or the Secretary determines that the proposal is

incomplete, the district or agency or the Secretary shall state with specificity what must be added to or revised for the proposal to be complete.”; and

(6) in paragraph (6) (as so designated), by striking “3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title” and inserting “(A) through (C), (E), (G), (H), (I), (L), and (M) of paragraph (4)”.

(b) Conforming Amendments.—The Central Valley Project Improvement Act (Public Law 102–575) is amended—

(1) in section 3407(c)(1) (106 Stat. 4726), by striking “3405(a)(1)(C)” and inserting “3405(a)(4)(C)”; and

(2) in section 3408(i)(1) (106 Stat. 4729), by striking “3405(a)(1) (A) and (J) of this title” and inserting “subparagraphs (A) and (J) of section 3405(a)(4)”

SEC. 310. Additional Emergency Consultation.

For adjustments to operating criteria other than under subpart (1) of Section 309(g) of this Act or to take urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner, no mitigation measures shall be required during any year that the Sacramento Valley index is 6.5 or lower, or at the request of the State of California, and until two succeeding years following either of those events have been completed where the final Sacramento Valley Index is 7.8 or greater, and any mitigation measures imposed must be based on quantitative data and required only to the extent that such data demonstrates actual harm to species.

SECTION 311. TRANSFER THE NEW MELONES UNIT, CENTRAL VALLEY PROJECT TO INTERESTED PROVIDERS.

(a) DEFINITIONS.—For the purposes of this Act, the following terms apply:

(1) INTERESTED LOCAL WATER AND POWER

PROVIDERS.—The term “interested local water and power providers” includes the Calaveras County Water District, Central San Joaquin Water Conservation District, Modesto Irrigation District, Oakdale Irrigation District, Stockton East Water District, South San Joaquin Irrigation District,

Tuolumne Utilities District, Turlock Irrigation District, and Union Public Utilities District.

(2) NEW MELONES UNIT, CENTRAL VALLEY

PROJECT.—The term “New Melones Unit, Central Valley project” means all Federal reclamation projects located within or diverting water from or to the watershed of the Stanislaus and San Joaquin rivers and their tributaries as authorized by the Act of August 26, 1937 (50 Stat. 850) and all Acts amendatory or supplemental thereto, including the Act of October 23, 1962 (76 Stat. 1173).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(b) NEGOTIATIONS.—Notwithstanding any other provision of law, not later than 180 days after the date of the enactment of this Act, the Secretary shall enter into negotiations with interested local water and power providers for the transfer ownership, control, and operation of the New Melones Unit, Central Valley Project to interested local water and power providers within the State of California.

(c) TRANSFER.—The Secretary may transfer the New Melones Unit, Central Valley project in accordance with an agreement reached pursuant to negotiations conducted under subsection (b).

Section 312. Report

Not later than 360 days after the date of the enactment of this Act, and every 6 months thereafter, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes, in detail—

(1) if an agreement is reached pursuant to negotiations conducted under section 1(b), the terms of that agreement;

(2) the status of formal discussions with interested

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local water and power providers for the transfer
of ownership, control, and operation of the New
Melones Unit, Central Valley Project to interested

local water and power providers;

(3) all unresolved issues that are preventing
execution of an agreement for the transfer of ownership,

control, and operation of the New Melones
Unit, Central Valley project to interested local water
and power providers;

(4) an analysis and review of studies, reports,
discussions, hearing transcripts, negotiations, and
other information about past and present formal discussions
that—

(A) have a serious impact on the progress
of the formal discussions;

(B) explain or provide information about
the issues that prevent progress or
finalization
of formal discussions; or

(C) are, in whole or in part, preventing
execution of an agreement for the
transfer; and

(5) any actions the Secretary recommends that
the United States should take to finalize
an agreement

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for that transfer.

Section 313

(e) The Commissioner of Reclamation is directed to work with local water and irrigation districts in the Stanislaus River Basin to ascertain the water storage made available by the Draft Plan of Operations in New Melones Reservoir (DRPO) for water conservation programs, conjunctive use projects, water transfers, rescheduled project water and other projects to maximize water storage and ensure the beneficial use of the water resources in the Stanislaus River Basin. All such programs and projects shall be implemented according to all applicable laws and regulations. The source of water for any such storage program at New Melones Reservoir shall be made available under a valid water right, consistent with the State of California water transfer guidelines and any other applicable state water law. The Commissioner shall inform the Congress within 18 months setting forth the amount of storage made available by the DRPO that has been put to use under this program, including proposals received by Reclamation from interested parties for the purpose of this section.

SEC. 312. ESA Applicants

In the event that the Bureau of Reclamation or another federal agency initiates or reinitiates consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service under section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)), with respect to construction or operation of the Central Valley Project and State Water Project, or any part thereof, the State Water Project ~~Contractors~~ and the Central Valley Project ~~Contractors~~ will be accorded all the rights and responsibilities extended to applicants in the consultation process.

TITLE IV— CALFED STORAGE FEASIBILITY STUDIES

SEC. 401. The Secretary of the Interior, through the Commissioner of Reclamation, shall—

(1) complete the feasibility studies described in

clauses (i)(I) and (ii)(II) of section 103(d)(1)(A) of

Public Law 108–361 (118 Stat. 1684) and submit

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such studies to the appropriate committees of the

House of Representatives and the Senate not later

than December 31, 2015;

(2) complete the feasibility studies described in

clauses (i)(II) and (ii)(I) of section 103(d)(1)(A) of

Public Law 108–361 and submit such studies to the

appropriate committees of the House of Representatives

and the Senate not later than November 30,

2016;

(3) complete the feasibility study described in

section 103(f)(1)(A) of Public Law 108–361 (118

Stat. 1694) and submit such study to the appropriate

Committees of the House of Representatives

and the Senate not later than December 31, 2017;

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and

(4) provide a progress report on the status of the feasibility studies referred to in paragraphs (1) through (3) to the appropriate committees of the House of Representatives and the Senate not later than 90 days after the date of the enactment of this Act and each 180 days thereafter until December 31, 2017, as applicable. The report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and Records of Decision.

SECTION 402. Temperance Flat

(a). Definitions.

For the Purposes of this section:

- (1) PROJECT – The term “Project” means the Temperance Flat Reservoir Project on the Upper San Joaquin River
- (2) RMP- The term “RMP” means the document titled “Bakersfield Field Office, Record of Decision & Approved Resource Management Plan”, dated December 2014
- (3) SECRETARY- The term “Secretary” means the Secretary of the Interior

(b). Applicability of RMP

The RMP and findings related thereto shall have no effect on or applicability to the Secretary’s determination of feasibility of, or on any findings or environmental review documents related to-

- (1) The Project; or
- (2) Actions taken by the Secretary pursuant to section 103(d)(1)(A)(ii)(II) of the CALFED Bay-Delta Authorization Act (Public Law 108-361).

(c). Duties of Secretary Upon Determination of Feasibility.

If the Secretary finds the Project to be feasible, the Secretary shall manage the land recommended in the RMP for designation under the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) in a manner that does not impede any environmental reviews, preconstruction, construction, or other activities of the Project, regardless of whether or not the Secretary submits any official recommendation to Congress under the Wild and Scenic Rivers Act.

(d) Reserved Water Rights

Effective December 22, 2014, there shall be no Federal reserved water rights to any segment of the San Joaquin River related to the Project as a result of any designation made under the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287).

SEC. 403. CALFED STORAGE ACCOUNTABILITY.

(1) If the Bureau of Reclamation determines that an environmental review document for the water storage projects referenced in of Section 103(d)(1) of P.L. 108-361 will not be completed according to the schedule specified in Section 401, the Bureau shall notify the Senate Committee on Energy and Natural Resources, the Senate Appropriations Subcommittee on

Energy and Water Development, the House of Representatives Natural Resources Committee, and the House of Representatives Transportation and Infrastructure Committee within 14 days of the determination. The notification shall include:

- (A) An explanation of the delay;
- (B) The anticipated length of the delay and the revised completion date;
- (C) The steps that the Bureau will take to mitigate the delay, including, but not limited to, a request to reprogram existing funds appropriated to the Bureau to meet the revised completion deadline.

(2) The Bureau of Reclamation shall carry out the procedures in subsection (a) for each subsequent delay beyond the revised completion deadline.

(3) IN GENERAL.—[Subject to paragraph (2),] if the Secretary fails to complete a feasibility study or environmental review required for any water storage project referred to in subsection (a) in accordance with the schedule specified in that subsection, the amounts made available to the Policy and Administration Account of the Bureau of Reclamation for fiscal year 2015 shall be withheld and reduced by an amount equal to the product obtained by multiplying—

(A) \$20,000; and

(B) the number of weeks during the period beginning on the applicable deadline for completion of the feasibility study or environmental review and ending on the date on which the final feasibility study or environmental review is completed.

(4) DISTRIBUTION.—If the relevant feasibility study or environmental review is delayed beyond the schedule specified in subsection (a), the percentage of withheld funds that shall be released and made available to the Bureau of Reclamation on completion of the feasibility study or environmental review document shall be—

(A) in the case of a delay the duration of which is less than [or equal to] 90 days, 100 percent of the withheld funds;

(B) in the case of a delay the duration of which is more than 90 days but less than [or equal to] 180 days, 75 percent of the withheld funds;

(C) in the case of a delay the duration of which is more than 180 days but less than [or equal to] 270 days, 50 percent of the withheld funds;

(D) in the case of a delay the duration of which is more than 270 days but less than [or equal to] 1 year, 25 percent of the withheld funds; and

(E) in the case of a delay the duration of which is more than 1 year, 0 percent of the withheld funds.

SEC. 404. WATER STORAGE PROJECT CONSTRUCTION.

(a) The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner or enter into an agreement on the water storage projects identified in section 103(d)(1) of

the Water Supply Reliability and Environmental Improvement Act (Public Law 108-361) (and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(b) If the Secretary determines a project described in Sections 402(a)(1) and (2) is feasible, the Secretary is authorized to carry out the project in a manner that is substantially in accordance with the recommended plan, and subject to the conditions described in the feasibility study, provided that no federal funding shall be used to construct the project.

SEC. 405 . DAM SAFETY PROJECTS WITH INCREASED STORAGE COMPONENT.

(a) Additional Project Benefits.—The Reclamation Safety of Dams Act of 1978 is amended—

(1) in section 3 (43 U.S.C. 507), by striking “Construction” and inserting “Except as provided in section 5B, construction”; and

(2) by inserting after section 5A (43 U.S.C. 509a) the following:

“SEC. 5B. ADDITIONAL PROJECT BENEFITS.

“(a) In General.—Notwithstanding section 3, if the Secretary makes a determination described in subsection (b), the Secretary is authorized to develop any additional project benefit—

“(1) through the construction of new or supplementary works on a project in conjunction with the activities carried out by the Secretary pursuant to section 2; and

“(2) subject to the conditions described in the feasibility study relating to the project.

“(b) Description of Determination.—A determination referred to in subsection (a) is a determination by the Secretary that—

“(1) an additional project benefit, including but not limited to additional conservation storage capacity, is—

“(A) necessary; and

“(B) in the interests of the United States; and

“(2) the project benefit proposed to be carried out is—

“(A) feasible; and

“(B) not inconsistent with the purposes of this Act.

“(c) Requirements.—The costs associated with developing an additional project benefit under this section shall be—

“(1) allocated to entity or entities benefitting from the additional conservation storage capacity, subject to agreement between the state and federal funding agencies on such

allocations; and

“(2) repaid in accordance with all applicable provisions of Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).”.

(b) San Luis Reservoir Expansion.—Section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) is amended—

(1) by adding at the end the following:

“(ii) ENVIRONMENTAL REVIEWS AND FEASIBILITY STUDY.—The Commissioner of Reclamation shall submit to Congress—

a final environmental impact statement relating to the San Luis Reservoir by not later than December 31, 2017.”.

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTIONS FOR STATE WATER PROJECT CONTRACTORS..

~~(a) IMPLEMENTATION IMPACTS.—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.~~

(b) Additional Yield.—If, as a result of the application of this Act, the California Department of Fish and Wildlife requires take authorization under section 2081 of the California Fish and Game Code for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project, as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a consequence of the Department’s action, Central Valley Project yield is greater than it would have been absent the Department’s actions, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset losses resulting from the Department’s action.

(c) Notification Related to Environmental Protections.—The Secretary of the Interior or the Secretary of Commerce shall notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented and shall confirm that such changes are authorized under the applicable biological opinion.

SEC. 502. AREA OF ORIGIN PROTECTIONS.

~~(a) IN GENERAL.—The Secretary of the Interior is directed, in the operation of the Central Valley Project, to adhere to California’s water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the Central Valley Project, regardless of the source of priority, including any appropriative water rights initiated~~

(b) Effect of section.—Nothing in this section affects or modifies any obligation of the Secretary of the Interior under section 8 of [the Act of June 17, 1902 (32 Stat. 390, chapter 1093)].

(a) In General.—The Secretaries shall not take any specific action authorized under this Act that will directly result in the involuntary reduction of water supply to individuals or districts that have in effect contracts for water with the State Water Project or the Central Valley Project, or other water users or purveyors organized under State law that obtain water based on other legal rights, as compared to the water supply that would be provided in the absence of action under this Act.

~~(a) IN GENERAL.—The Secretary of the Interior shall ensure that, except as otherwise provided for in a water service or repayment contract, actions taken in compliance with legal obligations imposed pursuant to or as a result of this Act, including such actions under section 7~~

SEC. 504. ALLOCATIONS FOR SACRAMENTO VALLEY CONTRACTORS.

~~(a) ALLOCATIONS.—~~

(b) Allocations of Water.—

(1) DEFINITION OF YEAR TERMS.—In this subsection, the terms “Above Normal”, “Below Normal”, “Dry”, and “Wet”, with respect to a year, have the meanings given those terms in the Sacramento Valley Water Year Type (40–30–30) Index.

(2) ALLOCATIONS.—Subject to paragraph (3) and subsection (c), the Secretary of the Interior shall in the operation of the Central Valley Project allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(A) Not less than 100 percent of their contract quantities in a “Wet” year.

(B) Not less than 100 percent of their contract quantities in an “Above Normal” year.

(C) Not less than 100 percent of their contract quantities in a “Below Normal” year that is preceded by an “Above Normal” or a “Wet” year.

(D) Not less than 50 percent of their contract quantities in a “Dry” year that is preceded by a “Below Normal”, an “Above Normal”, or a “Wet” year.

(E) In all other years not identified in any of subparagraphs (A) through (D), not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, That nothing in this subparagraph shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural waters.

(3) CONDITIONS.—The Secretary’s actions under paragraph (2) shall be subject to—

(A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River settlement contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;

(B) the obligation of the United States to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and

(C) the obligation of the Secretary of the Interior to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4714).

(c) Protection of Municipal and Industrial Supplies.—

(1) EFFECT OF SUBSECTION.—Nothing in subsection (b)—

(A) modifies any provision of a water service contract that addresses municipal and

industrial water shortage policies of the Secretary;

(B) affects or limits the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or

(C) affects or limits the authority of the Secretary to implement municipal and industrial water shortage policies.

(2) EFFECT ON AMERICAN RIVER DIVISION.—Nothing in subsection (b) or the implementation by the Secretary of subsection (b) shall constrain, govern, or affect, directly or indirectly, the operations of the Central Valley Project’s American River division or any deliveries from that division or a unit or facility of that division.

(d) Allocations to Contractors.—The allocations made pursuant to subsection (b) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by increasing or decreasing allocations to such contractors, compared to allocations such contractors would have received absent subsection (b).

(e) No Effect on Allocations.—This section shall not—

(1) affect the allocation of water to Friant division [of the Central Valley Project] contractors; or

(2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant division.

(f) Program for Water Rescheduling.—The Secretary shall direct the Commissioner of Reclamation to investigate and, if practicable, develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from 1 year to the next, subject to the condition that the program is consistent with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling water for Central Valley Project water service contractors that are located south of the Delta.

SEC. 505. EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act preempts or modifies any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, including established water rights priorities.

TITLE VI—MISCELLANEOUS

SEC. 601 . AUTHORIZED SERVICE AREA.

(a) In General.—The authorized service area of the Central Valley Project authorized under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) shall include

the area within the boundaries of the Kettleman City Community Services District, California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District, California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—Central Valley Project water deliveries authorized under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, California, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply for a permit with the State for a joint place of use for water deliveries authorized under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), consistent with State law.

(d) Additional Costs.—If any additional infrastructure, water treatment, or related costs are needed to implement this section, those costs shall be the responsibility of the non-Federal entity.

SEC. 602 . OVERSIGHT BOARD FOR RESTORATION FUND.

(a) Report; Advisory Board.—Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by adding at the end the following:

“(g) Report on Expenditure of Funds.—

“(1) IN GENERAL.—For each fiscal year, the Secretary, in consultation with the Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year.

“(2) CONTENTS.—The plan shall include an analysis of the cost-effectiveness of each expenditure.

“(h) Advisory Board.—

“(1) ESTABLISHMENT.—There is established the Restoration Fund Advisory Board (referred to in this section as the ‘Advisory Board’), which shall be composed of 15 members appointed by the Secretary.

“(2) MEMBERSHIP.—

“(A) IN GENERAL.—The Secretary shall appoint members to the Advisory Board that represent the various Central Valley Project stakeholders, of whom—

“(i) 4 members shall be agricultural users of the Central Valley Project;

“(ii) 2 members shall be municipal and industrial users of the Central Valley Project;

“(iii) 3 members shall be power contractors of the Central Valley Project;

“(iv) 1 member shall be a representative of a federal wildlife refuge that contracts for Central Valley Project water supplies with the Bureau of Reclamation;

“(v) 1 member shall have expertise in the economic impact of changes to water operations.

“(B) OBSERVER.—The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

“(C) CHAIRMAN.—The Secretary shall appoint 1 of the members described in subparagraph (A) to serve as Chairman of the Advisory Board.

“(3) TERMS.—The term of each member of the Advisory Board shall be 4 years.

“(4) DATE OF APPOINTMENTS.—The appointment of a member of the Panel shall be made not later than—

(A) the date that is 120 days after the date of enactment of this Act; or

(B) in the case of a vacancy on the Panel described in subsection (c)(2), the date that is 120 days after the date on which the vacancy occurs.

“(5) Vacancies.—

(A) IN GENERAL.—A vacancy on the Panel shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

(B) FILLING UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) EXPIRATION OF TERMS.—The term of any member shall not expire before the date on which the successor of the member takes office.

“(6) Removal —A Member of the Panel may be removed from office by the Secretary of the Interior.

“(7) Federal Advisory Committee Act. —The Panel shall not be subject to the requirements of the Federal Advisory Committee Act.

“(8) DUTIES.—The duties of the Advisory Board are—

“(A) to meet not less frequently than semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out under this title;

“(B) to ensure that any advice given or recommendation made by the Advisory Board reflects the independent judgment of the Advisory Board;

“(C) not later than December 31, 2015, and annually thereafter, to submit to the Secretary and Congress the recommendations under subparagraph (A); and

“(D) not later than December 31, 2015, and biennially thereafter, to submit to

Congress a report that details the progress made in achieving the actions required under section 3406.

“(9) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”

“(10) Cooperation and Assistance.—

(A) Upon request of the Panel Chairperson for information or assistance to facilitate the carrying out of this section, the Secretary of the Interior shall promptly provide such information, unless otherwise prohibited by law.

(B) Space and Assistance.—The Secretary of the Interior shall provide the Panel with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Panel, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

Sec. 603. WATER SUPPLY ACCOUNTING.

All Central Valley Project water, except Central Valley Project water released from the Friant Division pursuant to the [this needs to change to reflect amendment pertaining to Friant] San Joaquin River Restoration Settlement Act (Public Law 111-11) and water released pursuant to the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision, used to implement an action undertaken for a fishery beneficial purpose that was not imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, shall be credited to the quantity of Central Valley Project yield dedicated and managed under this section; provided, that nothing herein shall affect the Secretary's duty to comply with any otherwise lawful requirement imposed on operations of the Central Valley Project under any provision of federal or state law.

Sec. 604 . IMPLEMENTATION OF WATER REPLACEMENT PLAN.

(a) Not later than October 1, 2016, the Secretary shall update and implement the plan required by Section 3408(j) of Title 34 of Public Law 102-575. The Secretary shall provide reports to the Congress annually describing the progress of implementing the plan required by Section 3408(j) of Title 34 of Public Law 102-575.

—If the plan required by paragraph (a) has not increased the yield of the Central Valley Project by 800,000 acre-feet within 5 years of the enactment of this Act, Section 3406(b)(2) of Title 34 of Public Law 102-575 is repealed.

(c)

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Sec. 605 . NATURAL AND ARTIFICIALLY SPAWNED SPECIES.

After the date of the enactment of this title, and regardless of the date of listing, the Secretaries of the Interior and Commerce shall not distinguish between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that relates to any anadromous or pelagic fish species that resides for all or a portion of its life in the Sacramento-San Joaquin Delta or rivers tributary thereto.

Sec. 606 . AMENDMENT TO PURPOSES

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

(1) in subsection (f), by striking the period at the end; and

(2) by adding at the end the following:

“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2018, at the lowest cost reasonably achievable; and

“(h) to facilitate and expedite water transfers in accordance with this Act.”.

Sec. 607 . AMENDMENT TO DEFINITION

Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

(1) by amending subsection (a) to read as follows:

“(a) the term ‘anadromous fish’ means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean;”;

(2) in subsection (l), by striking “and,”

(3) in subsection (m), by striking the period and inserting “; and”, and

(4) by adding at the end the following:

“(n) the term ‘reasonable flow’ means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.”.

TITLE VII. REGULATORY STREAMLINING.

SEC. 701. PERMITTING EFFICIENCIES

(a) Definitions

- (1) SECRETARY- The term ‘Secretary’ means the Secretary of the Interior.
- (2) BUREAU- The term ‘Bureau’ means the Bureau of Reclamation.
- (3) QUALIFYING PROJECTS- The term ‘qualifying projects’ means new surface water storage projects in the States covered under the Act of June 17, 1902 (32 Stat. 388, Chapter 1093) and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) constructed on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding.
- (4) COOPERATING AGENCIES- The term ‘cooperating agency’ means a Federal agency with jurisdiction over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a qualifying project under applicable Federal laws and regulations, or a State agency subject to section 3(c).

(b) Establishment of lead agency and cooperating agencies.

- (a) Establishment of Lead Agency- The Bureau is established as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects.
- (b) Identification and Establishment of Cooperating Agencies- The Commissioner of the Bureau shall--
 - (1) identify, as early as practicable upon receipt of an application for a qualifying project, any Federal agency that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision required for a qualifying project under applicable Federal laws and regulations; and
 - (2) notify any such agency, within a reasonable timeframe, that the agency has been designated as a cooperating agency in regards to the qualifying project unless that agency responds to the Bureau in writing, within a timeframe set forth by the Bureau, notifying the Bureau that the agency--
 - (A) has no jurisdiction or authority with respect to the qualifying project;

- (B) has no expertise or information relevant to the qualifying project or any review, analysis, opinion, statement, permit, license, or other approval or decision associated therewith; or
- (C) does not intend to submit comments on the qualifying project or conduct any review of such a project or make any decision with respect to such project in a manner other than in cooperation with the Bureau.

(c) State Authority- A State in which a qualifying project is being considered may choose, consistent with State law--

- (1) to participate as a cooperating agency; and
- (2) to make subject to the processes of this Act all State agencies that--
 - (A) have jurisdiction over the qualifying project;
 - (B) are required to conduct or issue a review, analysis, or opinion for the qualifying project; or
 - (C) are required to make a determination on issuing a permit, license, or approval for the water resource project.

(c) Bureau Responsibilities

(a) In General- The principal responsibilities of the Bureau under this Act are to--

- (1) serve as the point of contact for applicants, State agencies, Indian tribes, and others regarding proposed projects;
- (2) coordinate preparation of unified environmental documentation that will serve as the basis for all Federal decisions necessary to authorize the use of Federal lands for qualifying projects; and
- (3) coordinate all Federal agency reviews necessary for project development and construction of qualifying projects.

(b) Coordination Process- The Bureau shall have the following coordination responsibilities:

- (1) PRE-APPLICATION COORDINATION- Notify cooperating agencies of proposed qualifying projects not later than 30 days after receipt of a proposal and facilitate a preapplication meeting for prospective applicants, relevant Federal and State agencies, and Indian tribes to--
 - (A) explain applicable processes, data requirements, and applicant submissions necessary to complete the required Federal agency reviews within the time frame established; and
 - (B) establish the schedule for the qualifying project.
- (2) CONSULTATION WITH COOPERATING AGENCIES- Consult with the cooperating agencies throughout the Federal agency review process, identify and obtain relevant data in a timely manner, and set necessary deadlines for cooperating agencies.
- (3) SCHEDULE- Work with the qualifying project applicant and cooperating agencies to establish a project schedule. In establishing the schedule, the Bureau shall consider, among other factors--
 - (A) the responsibilities of cooperating agencies under applicable laws and regulations;

- (B) the resources available to the cooperating agencies and the non-Federal qualifying project sponsor, as applicable;
- (C) the overall size and complexity of the qualifying project;
- (D) the overall schedule for and cost of the qualifying project; and
- (E) the sensitivity of the natural and historic resources that may be affected by the qualifying project.

(4) ENVIRONMENTAL COMPLIANCE- Prepare a unified environmental review document for each qualifying project application, incorporating a single environmental record on which all cooperating agencies with authority to issue approvals for a given qualifying project shall base project approval decisions. Help ensure that cooperating agencies make necessary decisions, within their respective authorities, regarding Federal approvals in accordance with the following timelines:

(A) Not later than one year after acceptance of a completed project application when an environmental assessment and finding of no significant impact is determined to be the appropriate level of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Not later than one year and 30 days after the close of the public comment period for a draft environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), when an environmental impact statement is required under the same.

(5) CONSOLIDATED ADMINISTRATIVE RECORD- Maintain a consolidated administrative record of the information assembled and used by the cooperating agencies as the basis for agency decisions.

(6) PROJECT DATA RECORDS- To the extent practicable and consistent with Federal law, ensure that all project data is submitted and maintained in generally accessible electronic format, compile, and where authorized under existing law, make available such project data to cooperating agencies, the qualifying project applicant, and to the public.

(7) PROJECT MANAGER- Appoint a project manager for each qualifying project. The project manager shall have authority to oversee the project and to facilitate the issuance of the relevant final authorizing documents, and shall be responsible for ensuring fulfillment of all Bureau responsibilities set forth in this section and all cooperating agency responsibilities under section 5.

(d) Cooperating Agency Responsibilities.

(a) Adherence to Bureau Schedule- Upon notification of an application for a qualifying project, all cooperating agencies shall submit to the Bureau a timeframe under which the cooperating agency reasonably considers it will be able to complete its authorizing responsibilities. The Bureau shall use the timeframe submitted under this subsection to establish the project schedule under section 4, and the cooperating agencies shall adhere to the project schedule established by the Bureau.

(b) Environmental Record- Cooperating agencies shall submit to the Bureau all environmental review material produced or compiled in the course of carrying out

activities required under Federal law consistent with the project schedule established by the Bureau.

(c) Data Submission- To the extent practicable and consistent with Federal law, the cooperating agencies shall submit all relevant project data to the Bureau in a generally accessible electronic format subject to the project schedule set forth by the Bureau.

(e) Funding to Process Permits.

(a) In General- The Secretary, after public notice in accordance with the Administrative Procedures Act (5 U.S.C. 553), may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project or activity for a public purpose under the jurisdiction of the Department of the Interior.

(b) Effect on Permitting-

(1) IN GENERAL- In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) EVALUATION OF PERMITS- In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall--

(A) be reviewed by the Regional Director of the Bureau of Reclamation, or the Regional Director's designee, of the region in which the qualifying project or activity is located; and

(B) use the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(3) IMPARTIAL DECISIONMAKING- In carrying out this section, the Secretary and the cooperating agencies receiving funds under this section for qualifying projects shall ensure that the use of the funds accepted under this section for such projects shall not--

(A) impact impartial decisionmaking with respect to the issuance of permits, either substantively or procedurally; or

(B) diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

(c) Limitation on Use of Funds- None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection

(b)(2)(A).

(d) Public Availability- The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public, including on the Internet.

Sec. 702. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS

(a) Conversion and Prepayment of Contracts-

(1) **CONVERSION-** Upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this Act and between the United States and a water users' association to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions. The manner of conversion under this paragraph shall be as follows:

(A) Water service contracts that were entered into under section 9(e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195).

(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).

(2) **PREPAYMENT-** All contracts converted pursuant to paragraph (1)(A) shall--

(A) upon request of the contractor, provide for the repayment, either in lump sum or by accelerated prepayment, of the remaining construction costs identified in water project specific irrigation rate repayment schedules, as adjusted to reflect payment not reflected in such schedule, and properly assignable for ultimate return by the contractor, or if made in approximately equal installments, no later than 3 years after the effective date of the repayment contract; such amount to be discounted by 1/2 the Treasury rate. An estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the contractor no later than 90 days following receipt of request of the contractor;

(B) require that construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the rate schedule referenced in subparagraph (A), and properly assignable to such contractor shall be repaid in not more than 5 years after notification of the allocation if such amount is a result of a collective annual allocation of capital costs to the contractors exercising contract conversion under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable reclamation law;

(C) provide that power revenues will not be available to aid in repayment of construction costs allocated to irrigation under the contract; and

(D) continue so long as the contractor pays applicable charges, consistent with section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.

(3) **CONTRACT REQUIREMENTS-** The following shall apply with regard to all contracts converted pursuant to paragraph (1)(B) and any other repayment contracts:

(A) Upon request of the contractor, provide for the repayment in lump sum of the remaining net present value of construction costs identified in water project specific municipal and industrial rate repayment schedules, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor. An estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the contractor no later than 90 days after receipt of request of contractor.

(B) The contract shall require that construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the rate schedule referenced in subparagraph (A), and properly assignable to such contractor, shall be repaid in not more than 5 years after notification of the allocation if such amount is a result of a collective annual allocation of capital costs to the contractors exercising contract conversation under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable reclamation law; and

(C) Continue so long as the contractor pays applicable charges, consistent with section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.

(4) CONDITIONS- All contracts entered into pursuant to paragraphs (1), (2), and (3) shall--

(A) not be adjusted on the basis of the type of prepayment financing used by the water users' association;

(B) conform to any other agreements, such as applicable settlement agreements and new constructed appurtenant facilities; and

(C) not modify other water service, repayment, exchange and transfer contractual rights between the water users' association, and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association and their landowners as provided under State law.

(b) Accounting- The amounts paid pursuant to subsection (a) shall be subject to adjustment following a final cost allocation by the Secretary of the Interior. In the event that the final cost allocation indicates that the costs properly assignable to the contractor are greater than what has been paid by the contractor, the contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one year and not more than 10 years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the parties. In the event that the final cost allocation indicates that the costs properly assignable to the contractor are less than what the contractor has paid, the Secretary shall credit such overpayment as an offset against any outstanding or future obligation of the contractor.

(c) Applicability of Certain Provisions-

(1) EFFECT OF EXISTING LAW- Upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs pursuant to a contract entered into pursuant to subsection (a)(2)(A), sections 213 (a) and (b)

of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

(2) EFFECT OF OTHER OBLIGATIONS- The obligation of a contractor to repay construction costs or other capitalized costs described in subsections (a)(2)(B), (a)(3)(B) or (b) shall not affect a contractor's status as having repaid all of the construction costs assignable to the contractor or the applicability of sections 213 (a) and (b) of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the amount required to be paid by the contractor under the repayment contract entered into pursuant to subsection (a)(2)(A) have been paid.

(d) Effect on Existing Law Not Altered- Implementation of the provisions of this Act shall not alter the repayment obligation of any water service or repayment contractor receiving water from the same water project, or shift any costs that would otherwise have been properly assignable to the water users' association identified in subsections (a)(1), (a)(2), and (a)(3) absent this section, including operation and maintenance costs, construction costs, or other capitalized costs incurred after the date of the enactment of this Act, or to other contractors.

(e) Surface Water Storage Enhancement Program-

(1) IN GENERAL- Three years following the date of enactment of this Act, all receipts generated from prepayment of contracts under this section beyond amounts necessary to cover the amount of receipts forgone from scheduled payments under current law for the 10-year period following the date of enactment of this Act shall be directed to the Reclamation Surface Water Storage Account under paragraph (2).

(2) SURFACE STORAGE ACCOUNT- The Secretary shall allocate amounts collected under paragraph (1) into the 'Reclamation Surface Storage Account' to fund or provide loans for the construction of surface water storage. The Secretary may also enter into cooperative agreements with water users' associations for the construction of surface water storage and amounts within the Surface Storage Account may be used to fund such construction. Surface water storage projects that are otherwise not federally authorized shall not be considered Federal facilities as a result of any amounts allocated from the Surface Storage Account for part or all of such facilities.

(3) REPAYMENT- Amounts used for surface water storage construction from the Account shall be fully reimbursed to the Account consistent with the requirements under Federal reclamation law (the law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093))), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.) except that all funds reimbursed shall be deposited in the Account established under paragraph (1).

(4) AVAILABILITY OF AMOUNTS- Amounts deposited in the Account under this subsection shall--

(A) be made available in accordance with this section, without further appropriation; and

(B) be in addition to amounts appropriated for such purposes under any other provision of law.

(5) PURPOSES OF SURFACE WATER STORAGE- Construction of surface water storage under this section shall be made for the following purposes:

- (A) Increased municipal and industrial water supply.
- (B) Agricultural floodwater, erosion, and sedimentation reduction.
- (C) Agricultural drainage improvements.
- (D) Agricultural irrigation.
- (E) Increased recreation opportunities.
- (F) Reduced adverse impacts to fish and wildlife from water storage or diversion projects within watersheds associated with water storage projects funded under this section.
- (G) Any other purposes consistent with reclamation laws or other Federal law.

Sec. 703. Bureau of Reclamation Surface Water Storage Streamlining

(a) DEFINITIONS.

- (1) ENVIRONMENTAL IMPACT STATEMENT- The term 'environmental impact statement' means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (2) ENVIRONMENTAL REVIEW PROCESS-
 - (A) IN GENERAL- The term 'environmental review process' means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.
 - (B) INCLUSIONS- The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (3) FEDERAL JURISDICTIONAL AGENCY- The term 'Federal jurisdictional agency' means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).
- (4) FEDERAL LEAD AGENCY- The term 'Federal lead agency' means the Bureau of Reclamation.
- (5) PROJECT- The term 'project' means a surface water project to be carried out or funded by the Secretary pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).
- (6) PROJECT SPONSOR- The term 'project sponsor' means a State, regional, or local authority or other qualifying entity, such as a water conservation district, irrigation district, water conservancy district, or rural water district or association.
- (7) PROJECT STUDY- The term 'project study' means a feasibility study for a project carried out pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(8) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

(9) SURFACE WATER STORAGE- The term 'surface water storage' means any surface water reservoir or impoundment that would be owned, funded, or operated by the Bureau of Reclamation.

(b) ACCELERATION OF STUDIES.

(a) In General- To the extent practicable, a project study initiated by the Secretary, after the date of enactment of this Act, under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto, shall--

- (1) result in the completion of a final feasibility report not later than 3 years after the date of initiation;
- (2) have a maximum Federal cost of \$3,000,000; and
- (3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the review required under that section.

(b) Extension- If the Secretary determines that a project study described in subsection (a) will not be conducted in accordance with subsection (a), the Secretary, not later than 30 days after the date of making the determination, shall--

- (1) prepare an updated project study schedule and cost estimate;
- (2) notify the non-Federal project cost-sharing partner that the project study has been delayed; and
- (3) provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the reasons the requirements of subsection (a) are not attainable.

(c) Exception-

(1) IN GENERAL- Notwithstanding the requirements of subsection (a), the Secretary may extend the timeline of a project study by a period not to exceed 3 years, if the Secretary determines that the project study is too complex to comply with the requirements of subsection (a).

(2) FACTORS- In making a determination that a study is too complex to comply with the requirements of subsection (a), the Secretary shall consider--

- (A) the type, size, location, scope, and overall cost of the project;
- (B) whether the project will use any innovative design or construction techniques;
- (C) whether the project will require significant action by other Federal, State, or local agencies;
- (D) whether there is significant public dispute as to the nature or effects of the project; and
- (E) whether there is significant public dispute as to the economic or environmental costs or benefits of the project.

(3) NOTIFICATION- Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate as to the results of that determination, including

an identification of the specific 1 or more factors used in making the determination that the project is complex.

(4) LIMITATION- The Secretary shall not extend the timeline for a project study for a period of more than 7 years, and any project study that is not completed before that date shall no longer be authorized.

(d) Reviews- Not later than 90 days after the date of the initiation of a project study described in subsection (a), the Secretary shall--

(1) take all steps necessary to initiate the process for completing federally mandated reviews that the Secretary is required to complete as part of the study, including the environmental review process under section 5;

(2) convene a meeting of all Federal, tribal, and State agencies identified under section 5(d) that may--

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study; and

(3) take all steps necessary to provide information that will enable required reviews and analyses related to the project to be conducted by other agencies in a thorough and timely manner.

(e) Interim Report- Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

(1) the status of the implementation of the planning process under this section, including the number of participating projects;

(2) a review of project delivery schedules, including a description of any delays on those studies initiated prior to the date of the enactment of this Act; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project.

(f) Final Report- Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make publicly available a report that describes--

(1) the status of the implementation of this section, including a description of each project study subject to the requirements of this section;

(2) the amount of time taken to complete each project study; and

(3) any recommendations for additional authority necessary to support efforts to expedite the project study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(c) EXPEDITED COMPLETION OF REPORTS.

The Secretary shall--

- (1) expedite the completion of any ongoing project study initiated before the date of enactment of this Act; and
- (2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of the project in accordance with the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

(d) PROJECT ACCELERATION.

(a) Applicability-

- (1) **IN GENERAL-** This section shall apply to each project study that is initiated after the date of enactment of this Act and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (2) **FLEXIBILITY-** Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.
- (3) **LIST OF PROJECT STUDIES-**
 - (A) **IN GENERAL-** The Secretary shall annually prepare, and make publicly available, a list of all project studies that the Secretary has determined--
 - (i) meets the standards described in paragraph (1); and
 - (ii) does not have adequate funding to make substantial progress toward the completion of the project study.
 - (B) **INCLUSIONS-** The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(b) Project Review Process-

- (1) **IN GENERAL-** The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.
- (2) **COORDINATED REVIEW-** The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.
- (3) **TIMING-** The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under section 5(d), establishes with respect to the project study.

(c) Lead Agencies-

- (1) **JOINT LEAD AGENCIES-**
 - (A) **IN GENERAL-** Subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or

successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) PROJECT SPONSOR AS JOINT LEAD AGENCY- A project sponsor that is a State or local governmental entity may--

- (i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if--

- (I) the Secretary provides guidance in the preparation process and independently evaluates that document;
- (II) the project sponsor complies with all requirements applicable to the Secretary under--

(aa) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

- (III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) DUTIES- The Secretary shall ensure that--

- (A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and
- (B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

(3) ADOPTION AND USE OF DOCUMENTS- Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under--

- (A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (B) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(4) **ROLES AND RESPONSIBILITY OF LEAD AGENCY-** With respect to the environmental review process for any project study, the Federal lead agency shall have authority and responsibility--

- (A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and
- (B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(d) **Participating and Cooperating Agencies-**

(1) **IDENTIFICATION OF JURISDICTIONAL AGENCIES-** With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may--

- (A) have jurisdiction over the project;
- (B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or
- (C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) **STATE AUTHORITY-** If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that--

- (A) have jurisdiction over the project;
- (B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or
- (C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) **INVITATION-**

- (A) **IN GENERAL-** The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.
- (B) **DEADLINE-** An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) **PROCEDURES-** Section 1501.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Bureau of Reclamation Surface Water Storage Streamlining Act) shall govern the identification and the participation of a cooperating agency.

(5) **FEDERAL COOPERATING AGENCIES-** Any Federal agency that is invited by the Federal lead agency to participate in the environmental review process for a project study shall be designated as a cooperating agency by the Federal lead

agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency--

- (A)(i) has no jurisdiction or authority with respect to the project;
- (ii) has no expertise or information relevant to the project; or
- (iii) does not have adequate funds to participate in the project; and
- (B) does not intend to submit comments on the project.

(6) ADMINISTRATION- A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) EFFECT OF DESIGNATION- Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency--

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) CONCURRENT REVIEWS- Each participating or cooperating agency shall--

- (A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and
- (B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) Programmatic Compliance-

(1) IN GENERAL- The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that--

- (A) eliminates repetitive discussions of the same issues;
- (B) focuses on the actual issues ripe for analyses at each level of review;
- (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that are needed to carry out an environmental review process; and
- (D) complies with--
 - (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
 - (ii) all other applicable laws.

(2) REQUIREMENTS- In carrying out paragraph (1), the Secretary shall--

- (A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;
- (B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;
- (C) ensure that the programmatic reviews--

- (i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;
- (ii) use accurate and timely information in the environmental review process, including--
 - (I) criteria for determining the general duration of the usefulness of the review; and
 - (II) the timeline for updating any out-of-date review;
- (iii) describe--
 - (I) the relationship between programmatic analysis and future tiered analysis; and
 - (II) the role of the public in the creation of future tiered analysis; and
- (iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;
- (D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and
- (E) address any comments received under subparagraph (D).

(f) Coordinated Reviews-

(1) COORDINATION PLAN-

(A) ESTABLISHMENT- The Federal lead agency shall, after consultation with and with the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, establish a plan for coordinating public and agency participation in, and comment on, the environmental review process for a project study or a category of project studies.

(B) SCHEDULE-

- (i) IN GENERAL- As soon as practicable but not later than 45 days after the close of the public comment period on a draft environmental impact statement, the Federal lead agency, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in subparagraph (A), a schedule for completion of the environmental review process for the project study.
- (ii) FACTORS FOR CONSIDERATION- In establishing a schedule, the Secretary shall consider factors such as--
 - (I) the responsibilities of participating and cooperating agencies under applicable laws;
 - (II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;
 - (III) the overall size and complexity of the project;
 - (IV) the overall schedule for and cost of the project; and

- (V) the sensitivity of the natural and historical resources that could be affected by the project.
- (iii) MODIFICATIONS- The Secretary may--
 - (I) lengthen a schedule established under clause (i) for good cause; and
 - (II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.
- (iv) DISSEMINATION- A copy of a schedule established under clause (i) shall be--
 - (I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and
 - (II) made available to the public.
- (2) COMMENT DEADLINES- The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:
 - (A) DRAFT ENVIRONMENTAL IMPACT STATEMENTS- For comments by Federal and States agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless--
 - (i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or
 - (ii) the deadline is extended by the Federal lead agency for good cause.
 - (B) OTHER ENVIRONMENTAL REVIEW PROCESSES- For all other comment periods established by the Federal lead agency for agency or public comments in the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless--
 - (i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or
 - (ii) the deadline is extended by the Federal lead agency for good cause.
- (3) DEADLINES FOR DECISIONS UNDER OTHER LAWS- In any case in which a decision under any Federal law relating to a project study, including the issuance or denial of a permit or license, is required to be made by the date described in subsection (h)(5)(B), the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate--
 - (A) as soon as practicable after the 180-day period described in subsection (h)(5)(B), an initial notice of the failure of the Federal agency to make the decision; and

(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project study have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) INVOLVEMENT OF THE PUBLIC- Nothing in this subsection reduces any time period provided for public comment in the environmental review process under applicable Federal law (including regulations).

(5) TRANSPARENCY REPORTING-

(A) REPORTING REQUIREMENTS- Not later than 1 year after the date of enactment of this Act, the Secretary shall establish and maintain an electronic database and, in coordination with other Federal and State agencies, issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other Federal, State, or local approval or action required for a project study for which this section is applicable.

(B) PROJECT STUDY TRANSPARENCY- Consistent with the requirements established under subparagraph (A), the Secretary shall make publicly available the status and progress of any Federal, State, or local decision, action, or approval required under applicable laws for each project study for which this section is applicable.

(g) Issue Identification and Resolution-

(1) COOPERATION- The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or result in the denial of any approval required for the project study under applicable laws.

(2) FEDERAL LEAD AGENCY RESPONSIBILITIES-

(A) IN GENERAL- The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) DATA SOURCES- The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) COOPERATING AND PARTICIPATING AGENCY RESPONSIBILITIES-

Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) ACCELERATED ISSUE RESOLUTION AND ELEVATION-

(A) IN GENERAL- On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution

meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may--

- (i) delay completion of the environmental review process; or
- (ii) result in denial of any approval required for the project study under applicable laws.

(B) MEETING DATE- A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) NOTIFICATION- On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) ELEVATION OF ISSUE RESOLUTION- If a resolution cannot be achieved within the 30-day period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) CONVENTION BY SECRETARY- The Secretary may convene an issue resolution meeting under this paragraph at any time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) FINANCIAL PENALTY PROVISIONS-

(A) IN GENERAL- A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE-

(i) IN GENERAL-

(I) TRANSFER OF FUNDS- If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the amount specified in item (aa) or (bb) of subclause (II), and those funds shall be made available to the division of the Federal jurisdictional agency charged with rendering the decision by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C).

(II) AMOUNT TO BE TRANSFERRED- The amount referred to in subclause (I) is--

(aa) \$20,000 for any project study requiring the preparation of an environmental assessment or environmental impact statement; or

(bb) \$10,000 for any project study requiring any type of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) other than an environmental assessment or environmental impact statement.

(ii) DESCRIPTION OF DATE- The date referred to in clause (i) is the later of--

(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) LIMITATIONS-

(i) IN GENERAL- No transfer of funds under subparagraph (B) relating to an individual project study shall exceed, in any fiscal year, an amount equal to 1 percent of the funds made available for the applicable agency office.

(ii) FAILURE TO DECIDE- The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5 percent of the funds made available for the applicable agency office for that fiscal year.

(iii) AGGREGATE- Notwithstanding any other provision of law, for each fiscal year, the aggregate amount of financial penalties assessed against each applicable agency office under this Act and any other Federal law as a result of a failure of the agency to make a decision by an applicable deadline for environmental review, including the total amount transferred under this paragraph, shall not exceed an amount equal to 9.5 percent of the funds made available for the agency office for that fiscal year.

(D) NO FAULT OF AGENCY-

(i) IN GENERAL- A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that--

(I) the agency has not received necessary information or approvals from another entity in a manner that affects the

ability of the agency to meet any requirements under Federal, State, or local law;
 (II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or
 (III) the agency lacks the financial resources to complete the review under the scheduled timeframe, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.

(ii) **LACK OF FINANCIAL RESOURCES-** If the agency provides notice under clause (i)(III), the Inspector General of the agency shall--

(I) conduct a financial audit to review the notice; and
 (II) not later than 90 days after the date on which the review described in subclause (I) is completed, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the notice.

(E) **LIMITATION-** The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(F) **EFFECT OF PARAGRAPH-** Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(h) **Memorandum of Agreements for Early Coordination-**

(1) **SENSE OF CONGRESS-** It is the sense of Congress that--

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State and local agencies, and Indian tribes on environmental review and Bureau of Reclamation project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) **TECHNICAL ASSISTANCE-** If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the

environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) MEMORANDUM OF AGENCY AGREEMENT- If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribes, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(i) Limitations- Nothing in this section preempts or interferes with--

(1) any obligation to comply with the provisions of any Federal law, including--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) any other Federal environmental law;

(2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;

(3) any requirement for seeking, considering, or responding to public comment; or

(4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying out a project or any other provision of law applicable to projects.

(j) Timing of Claims-

(1) TIMING-

(A) IN GENERAL- Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless the claim is filed not later than 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law that allows judicial review.

(B) APPLICABILITY- Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) NEW INFORMATION-

(A) IN GENERAL- The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations (including successor regulations).

(B) SEPARATE ACTION- The preparation of a supplemental environmental impact statement or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental environmental impact statement or other environmental document.

(k) Categorical Exclusions-

(1) IN GENERAL- Not later than 180 days after the date of enactment of this Act, the Secretary shall--

(A) survey the use by the Bureau of Reclamation of categorical exclusions in projects since 2005;

(B) publish a review of the survey that includes a description of--

(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions.

(2) NEW CATEGORICAL EXCLUSIONS- Not later than 1 year after the date of enactment of this Act, if the Secretary has identified a category of activities that merit establishing a categorical exclusion that did not exist on the day before the date of enactment this Act based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(l) Review of Project Acceleration Reforms-

(1) IN GENERAL- The Comptroller General of the United States shall--

(A) assess the reforms carried out under this section; and

(B) not later than 5 years and not later than 10 years after the date of enactment of this Act, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the results of the assessment.

(2) CONTENTS- The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on--

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(m) Performance Measurement- The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(n) Categorical Exclusions in Emergencies- For the repair, reconstruction, or rehabilitation of a Bureau of Reclamation surface water storage project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is--

- (1) in the same location with the same capacity, dimensions, and design as the original Bureau of Reclamation surface water storage project as before the declaration described in this section; and
- (2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.

(e) ANNUAL REPORT TO CONGRESS.

(a) In General- Not later than February 1 of each year, the Secretary shall develop and submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an annual report, to be entitled 'Report to Congress on Future Surface Water Storage Development', that identifies the following:

- (1) PROJECT REPORTS- Each project report that meets the criteria established in subsection (c)(1)(A).
- (2) PROPOSED PROJECT STUDIES- Any proposed project study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).
- (3) PROPOSED MODIFICATIONS- Any proposed modification to an authorized surface water storage project or project study that meets the criteria established in subsection (c)(1)(A) that--
 - (A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or
 - (B) is identified by the Secretary for authorization.

(b) Requests for Proposals-

- (1) PUBLICATION- Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed project studies and proposed modifications to authorized surface water storage projects and project studies to be included in the annual report.
- (2) DEADLINE FOR REQUESTS- The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.
- (3) NOTIFICATION- On the date of publication of each notice required by this subsection, the Secretary shall--
 - (A) make the notice publicly available, including on the Internet; and
 - (B) provide written notification of the publication to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) Contents-

- (1) PROJECT REPORTS, PROPOSED PROJECT STUDIES, AND PROPOSED MODIFICATIONS-
 - (A) CRITERIA FOR INCLUSION IN REPORT- The Secretary shall include in the annual report only those project reports, proposed project

studies, and proposed modifications to authorized surface water storage projects and project studies that--

- (i) are related to the missions and authorities of the Bureau of Reclamation;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;
- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Bureau of Reclamation.

(B) DESCRIPTION OF BENEFITS-

(i) DESCRIPTION- The Secretary shall describe in the annual report, to the extent applicable and practicable, for each proposed project study and proposed modification to an authorized water resources development project or project study included in the annual report, the benefits, as described in clause (ii), of each such study or proposed modification.

(ii) BENEFITS- The benefits (or expected benefits, in the case of a proposed project study) described in this clause are benefits to--

- (I) the protection of human life and property;
- (II) improvement to domestic irrigated water and power supplies;
- (III) the national economy;
- (IV) the environment; or
- (V) the national security interests of the United States.

(C) IDENTIFICATION OF OTHER FACTORS- The Secretary shall identify in the annual report, to the extent practicable--

- (i) for each proposed project study included in the annual report, the non-Federal interest that submitted the proposed project study pursuant to subsection (b); and
- (ii) for each proposed project study and proposed modification to a surface water storage project or project study included in the annual report, whether the non-Federal interest has demonstrated--
 - (I) that local support exists for the proposed project study or proposed modification to an authorized surface water storage project or project study (including the surface water storage development project that is the subject of the proposed feasibility study or the proposed modification to an authorized project study); and
 - (II) the financial ability to provide the required non-Federal cost share.

(2) TRANSPARENCY- The Secretary shall include in the annual report, for each project report, proposed project study, and proposed modification to a surface water storage project or project study included under paragraph (1)(A)--

(A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of--

- (i) the project report;
- (ii) the proposed project study;
- (iii) the authorized project study for which the modification is proposed; or
- (iv) construction of--
 - (I) the surface water storage project that is the subject of--

(aa) the water report;

(bb) the proposed project study; or

(cc) the authorized project study for which a modification is proposed; or

(II) the proposed modification to a surface water storage development project;

(B) a letter or statement of support for the water report, proposed project study, or proposed modification to an authorized surface water storage development project or project study from each associated non-Federal interest;

(C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to an authorized surface water storage project or project study;

(D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of--

- (i) the proposed modification to an authorized project study; and
- (ii) construction of--
 - (I) the surface water storage development project that is the subject of--

(aa) the project report; or

(bb) the authorized project study for which a modification is proposed, with respect to the change in costs resulting from such modification; or

(II) the proposed modification to an authorized surface water storage development project; and

(E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of--

- (i) the surface water storage development project that is the subject of--
 - (I) the project report; or

- (II) the authorized project study for which a modification is proposed, with respect to the benefits of such modification; or
- (ii) the proposed modification to an authorized surface water storage development project.
- (3) CERTIFICATION- The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to a surface water storage project or project study included in the annual report meets the criteria established in paragraph (1)(A).
- (4) APPENDIX- The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.
- (d) Special Rule for Initial Annual Report- Notwithstanding any other deadlines required by this section, the Secretary shall--
 - (1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a notice required by subsection (b)(1); and
 - (2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.
- (e) Publication- Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.
- (f) Definition- In this section the term 'project report' means a final feasibility report developed under the Reclamation Act of 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

Sec. 704. Environmental Procedures Streamlining

(a) ESTABLISHMENT.—

- (1) IN GENERAL.—The Secretary shall carry out a water infrastructure project delivery program (referred to in this section as the “program”).

(2) ASSUMPTION OF RESPONSIBILITY.—

- (A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more eligible water infrastructure projects described in subparagraph (B) within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (B) ELIGIBLE WATER INFRASTRUCTURE PROJECTS.—In this section the term “eligible water infrastructure projects” means projects for which a non-Federal entity has lead responsibility for approving the overall project, including

projects for which federal agency permitting is required or some federal funding is provided.

(C) **ADDITIONAL RESPONSIBILITY.**—If a State assumes responsibility under subparagraph (A)—

- (i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but
- (ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more eligible water infrastructure projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(D) **PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.**—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(E) **FEDERAL RESPONSIBILITY.**—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(F) **NO EFFECT ON AUTHORITY.**—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of the Interior, under applicable law (including regulations) with respect to a project.

(G) **PRESERVATION OF FLEXIBILITY.**—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(b) **STATE PARTICIPATION.**—

(1) **PARTICIPATING STATES.** — California is eligible to participate in the program.

(2) **APPLICATION.**—Not later than 270 days after the date of enactment, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in an application of a State to participate in the program, including, at a minimum—

- (A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;
- (B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and
- (C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) **PUBLIC NOTICE.**—

(A) **IN GENERAL.**—The State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the state.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

- (A) the regulatory requirements under paragraph (2) have been met;
- (B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over water infrastructure matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top ranking water infrastructure official in the State who is charged with responsibility for water infrastructure construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information that the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) **EFFECT OF ASSUMPTION OF RESPONSIBILITY.**— A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) **LIMITATIONS ON AGREEMENTS.**—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) **AUDITS.**—

(1) **IN GENERAL.**—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

- (A) semiannual audits during each of the first 2 years of State participation; and
- (B) annual audits during of the third and fourth years of State participation.

(2) **PUBLIC AVAILABILITY AND COMMENT.**—

(A) **IN GENERAL.**—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) **RESPONSE.**—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) **MONITORING.** — After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(j) **TERMINATION.** —

(1) **TERMINATION BY SECRETARY.**—The Secretary may terminate the participation of any State in the program if—

- (A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;
- (B) the Secretary provides to the State—
 - (i) notification of the determination of noncompliance; and
 - (ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and
- (C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.

(2) **TERMINATION BY THE STATE.** — The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

Section 705 Water Rights Protections.

(a) Treatment of Water Rights.

The Secretary of the Interior and the Secretary of Agriculture--

- (1) shall not condition the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer of any water right (including joint and sole ownership) directly to the United States, or any impairment of title, in whole or in part, granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact; and
- (2) shall not require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement.

(b) Definition.

For purposes of this Act, the term 'water right' means any surface, groundwater, or storage use filed, permitted, certificated, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts it to beneficial use. Such term shall include water rights for federally recognized Indian tribes.

c) Impacts on Existing Authorities.

- (1) Nothing in this Act limits or expands any existing legally recognized authority of the Secretaries to issue, grant, or condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal lands subject to their respective jurisdictions.
- (2) Nothing in this Act shall in any way interfere with existing or future Bureau of Reclamation contracts entered into pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act).
- (3) Nothing in this Act shall affect the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (4) Nothing in this Act limits or expands any existing reserved water rights of the Federal Government on lands administered by the Secretary of the Interior or the Secretary of Agriculture.
- (5) Nothing in this Act limits or expands authorities pursuant to sections 4(e), 10(j), or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j), and 811).
- ~~(6)~~(1) Nothing in this Act limits or expands any existing reserved water right or treaty right of any federally recognized Indian tribe.

From: Nelson, Damon
Sent: Thursday, May 21, 2015 7:06 PM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: Re: Draft

Thank you! Will do.

Damon Nelson
Sent from my iPhone

On May 21, 2015, at 8:13 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Damon,
Attached is a draft. Please call me in the morning to discuss the proposed amendments.
Tom

<CA Water Draft.doc>

From: Weaver, Kiel
Sent: Sunday, May 24, 2015 9:38 AM
To: Birmingham, Thomas (tbirmingham@westlandswater.org)
CC: David Bernhardt
Subject: Rob Bishop tour

Tom,

Can you let Sarah Woolf know that I will accompany Bishop on Tuesday. I will just meet the tour organizers and Bishop at the airport at 10:30am on Tuesday and ride in the same vehicle. Thanks

*Kiel Weaver
Staff Director
House Water, Power and Oceans Subcommittee
1522 Longworth HOB
Washington, DC 20515
kiel.weaver@mail.house.gov
202-■■■■-■■■■*

From: Johnny Amaral

Sent: Wednesday, May 27, 2015 9:27 AM

To: David Bernhardt; Joe Findaro; Denny Rehberg; Dennis Cardoza; Catherine Karen

Subject: Lunch on Monday in DC

Team,

Im coming in to DC LATE Sunday night, and would like to huddle together for lunch on Monday. Somewhere on or near the hill. Suggestions?

From: Bernhardt, David L.
Sent: Wednesday, June 3, 2015 5:32 PM
To: Joseph T. Findaro Jr.; Johnny Amaral
Subject: Fwd: Tom

Johnny and Joe: John can meet with Tom at 12 or 1 tomorrow? Do you want to select a time?

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From: Johnny Amaral
Sent: Wednesday, June 3, 2015 5:46 PM
To: Bernhardt, David L.
CC: Joseph T. Findaro Jr.
Subject: Re: Tom

Forgive me, but who is John? The email is cut off

Best,

Johnny Amaral

On Jun 3, 2015, at 8:31 PM, "Bernhardt, David L." <DBernhardt@BHFS.com> wrote:

Johnny and Joe: John can meet with Tom at 12 or 1 tomorrow? Do you want to select a time?

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From: Bernhardt, David L.
Sent: Wednesday, June 3, 2015 6:05 PM
To: Johnny Amaral
Subject: Re: Tom

Watts

[REDACTED]

On Jun 3, 2015, at 8:46 PM, Johnny Amaral <jamara1@westlandswater.org> wrote:

Forgive me, but who is John? The email is cut off

Best,

Johnny Amaral

On Jun 3, 2015, at 8:31 PM, "Bernhardt, David L." <DBernhardt@BHFS.com> wrote:

Johnny and Joe: John can meet with Tom at 12 or 1 tomorrow? Do you want to select a time?

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From: Johnny Amaral
Sent: Wednesday, June 3, 2015 6:33 PM
To: Bernhardt, David L.
CC: Joe Findaro
Subject: Re: Tom

Looks like 12:00pm works

Best,

Johnny Amaral

On Jun 3, 2015, at 9:04 PM, "Bernhardt, David L." <DBernhardt@BHFS.com> wrote:

Watts

[REDACTED]

On Jun 3, 2015, at 8:46 PM, Johnny Amaral <jamal@westlandswater.org> wrote:

Forgive me, but who is John? The email is cut off

Best,

Johnny Amaral

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From: Jason Peltier

Sent: Saturday, June 6, 2015 10:07 AM

To: Tom Birmingham; Johnny Amaral; Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt

Subject: LATimes on fed legislation

LOCAL POLITICS

California's congressional delegation can't agree on response to drought



The Bridge Bay Marina at Lake Shasta reflects the severity of California's drought. The state's congressional delegation has been stymied by disagreements over the causes and the role of the federal government in mitigating its consequences. (Allen J. Schaben / Los Angeles Times)

By **NOAH BIERMAN** *contact the reporter*

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California's splintered congressional delegation has been stymied by disagreements over drought's causes

California's delegation disagrees about federal government's role in mitigating drought's consequences
'Both sides have been attacking each other's proposals,' says a Southern California water official

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If anything, recent fights have only hardened positions, with both sides questioning each other's motives.

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cComments

- *All of them are taking bribes from the rich farmers, we have been sold out in a bipartisan manner.*

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AT 9:34 AM JUNE 06, 2015

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Twitter: @noahbierman

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From: Tom Birmingham
Sent: Wednesday, June 10, 2015 2:37 PM
To: 'Peterson, James (Feinstein)'
CC: 'Watts, John (Feinstein)'; 'Johnny Amaral'; 'Bernhardt, David L.'
Subject: Recycling Language
Attachments: Water Recycling Language.docx

James,

Attached is the water recycling language which I modified to make a Reclamation program. Please call me to discuss further changes.

Tom

TITLE ~~WESTERN NATIONAL~~ WATER RECYCLING AND
RECLAMATION ACT

SEC. 1. Short title – This Title may be cited as the “~~Western National~~ Water Recycling and Reclamation Act.”

SEC. 2. Program Establishment

There is established within the ~~Bureau of Reclamation United States Environmental Protection Agency (EPA)~~ the ~~National~~Western Water Recycling and Reclamation Program to distribute funds appropriated pursuant to this Act as discretionary grants to be awarded to eligible entities on a competitive basis for water recycling and reclamation projects.

SEC. 3. Definitions

1. ELIGIBLE PROJECT COSTS. - The term "eligible project costs" means amounts substantially all of which are paid by, or for the account of, an eligible entity in connection with a project, including the cost of -
 - A. development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;
 - B. construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment;
 - C. capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction; and,
 - D. reimbursement for eligible project costs incurred prior to the enactment of this Act.
2. ELIGIBLE ENTITIES. -The term “eligible entities” means a corporation, partnership, joint venture, trust, public or investor-owned utility, private

entity, governmental entity, agency, or instrumentality, or any other reclamation and reuse entity.

~~3.~~ PROJECT. - The term "project" means a project carried out by the EPABUREAU OF RECLAMATION and an eligible entity for water recycling or water.

~~4.3.~~ ~~EPA~~ The term "EPA" means the Environmental Protection Agency of the United States.

SEC. 4. Determination of eligibility and project selection

a. ELIGIBILITY. - To be eligible to receive financial assistance under this Act, a project shall meet the following criteria:

1. APPLICATION. - An eligible water reclamation and reuse entity undertaking the project shall submit a project application to the Bureau of Reclamation~~EPA~~.
2. MINIMUM ELIGIBLE PROJECT COSTS. - To be eligible for assistance under this Act, a project shall have eligible total project costs that are reasonably anticipated to exceed \$1,000,000.
3. DEDICATED REVENUE SOURCES. - To be eligible for assistance under this Act, a project shall have a demonstrated source of non-Federal revenues to satisfy the non-Federal share.

b. SELECTION AMONG ELIGIBLE PROJECTS. -

1. ESTABLISHMENT. - The ~~EPA~~Bureau of Reclamation shall establish criteria for selecting among projects that meet the eligibility requirements specified in subsection (a).
2. SELECTION CRITERIA. -
 - A. IN GENERAL. - The selection criteria shall include the following:
 - i. The extent to which the project addresses near and long term water demand and supplies, protects the environment, increases water supply, or otherwise enhances the overall water reclamation and reuse system
 - ii. The extent to which the project enhances the return on the Federal investment through the production of new, highly renewable water supplies.

- iii. The likelihood that assistance under this Act would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.
- iv. The extent to which the project uses measures and that enhance the efficiency of the project.
- v. The amount of budget authority required to fund the Federal credit instrument made available under this Act.

B. TIMING. –The ~~EPA~~Bureau of Reclamation -shall (1) publish criteria on which to base the competition for any grants awarded under this Act not later than 90 days after enactment of this Act; (2) require applications for funding to be submitted not later than 180 days after publication of such criteria; and, (3) announce all projects selected to be funded from such funds not later than one year after enactment of this Act.

SEC. 5. Federal Share

In recognition of the return on investment of a project through the production of new, highly renewable water supplies, the Federal share shall be 80 percent of the reasonable anticipated eligible project costs.

SEC. 6. Regulations

The ~~EPA~~Bureau of Reclamation may issue such regulations as the ~~itEPA~~ determines appropriate to carry out this Act.

SEC. 7. Funding

a. FUNDING. -

1. IN GENERAL. - There is authorized to be appropriated \$500 million for each of FY16-20 to carry out this Act.
2. AVAILABILITY. - Amounts made available to carry out this Act shall remain available until expended.

3. ADMINISTRATIVE COSTS. - From funds made available to carry out this Act, the EPA Bureau of Reclamation -may use, for the administration of this Act, not more than 2 percent for each year.

SEC. 8. Funding Offset

- a. SUBMISSION OF PROJECT LIST.- On or before October 1, 2015, the EPA Bureau of Reclamation -shall submit to Congress a list of recycled water projects or separable elements of such projects that have been authorized but that have received no obligations during the 5 full fiscal years preceding the submission of that list.
- b. ADDITIONAL NOTIFICATION. - On submission of the list under subparagraph (A) to Congress, the EPA Bureau of Reclamation -shall notify -
 1. Each Senator in whose State and each Member of the House of Representatives in whose district a project (including any part of a project) on that list would be located; and,
 2. Each applicable non-Federal interest associated with a project (including any part of a project) on that list.
- c. DEAUTHORIZATION. - A project or separable element included in the list under subparagraph (A) is not authorized after the last date of the fiscal year following the fiscal year in which the list is submitted to Congress, if funding has not been obligated for the planning design, or construction of the project or element of the project during that period.

SEC. 9. Reports to Congress

On October 1, 2016, and every 2 years thereafter, the EPA Bureau of Reclamation -shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this Act.

From: Johnny Amaral

Sent: Monday, June 15, 2015 9:37 AM

To: Denny Rehberg; David Bernhardt; Dennis Cardoza; Joe Findaro; Catherine Karen

Subject: no call today. i'm tied up all morning

Sorry for the late notice.

From: Karen, Catherine
Sent: Monday, June 15, 2015 9:42 AM
To: Johnny Amaral
Subject: RE: no call today. i'm tied up all morning

Ok. Thanks for the heads up. No worries.

From: Johnny Amaral
Sent: Monday, June 15, 2015 11:36:41 AM
To: Denny Rehberg; David Bernhardt; Dennis Cardoza; Joe Findaro; Karen, Catherine
Subject: no call today. i'm tied up all morning

Sorry for the late notice.

This e-mail is sent by a law firm and may contain information that is privileged or confidential.
If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: Johnny Amaral

Sent: Tuesday, June 16, 2015 7:35 PM

To: Tom Birmingham; Dennis Cardoza; Denny Rehberg; David Bernhardt; Catherine Karen; Joe Findaro; Ed Manning; Carolyn Jensen

Subject: SJR Exchange Contractors & SJR Resource Management Coalition's Comments on SJRRP Draft 2015 Revised Framework

Attachments: SJECWA and SJRRMC Framework Comments.pdf; Untitled attachment 04654.htm; Nickel Farms ltr re Framework 6.15.15.PDF; Untitled attachment 04657.htm

FYI.

From: Joann White [<mailto:jwhite@sjrecwa.net>]

Sent: Tuesday, June 16, 2015 12:08 PM

To: 'john_watts@feinstein.senate.gov<mailto:john_watts@feinstein.senate.gov>'; Lombardi, Kyle; Lopez, Juan; Butler, Jessica; David Murillo (dmurillo@usbr.gov<<mailto:dmurillo@usbr.gov>>); Shannon, Caitlin; 'Joaquin_esquivel@boxer.senate.gov<mailto:Joaquin_esquivel@boxer.senate.gov>'; Michael Connor (Michael_Connor@ios.doi.gov<mailto:Michael_Connor@ios.doi.gov>); Estevan Lopez (cyrice@usbr.gov<<mailto:cyrice@usbr.gov>>); Larrabee, Jason

Cc: Steve Chedester; Tom Berliner

(TMBerliner@duanemorris.com<<mailto:TMBerliner@duanemorris.com>>); Mari Martin

(cotnlady@inreach.com<<mailto:cotnlady@inreach.com>>); 'Chase Hurley'; Chris White

(cwhite@ccidwater.org<<mailto:cwhite@ccidwater.org>>); Jeff Bryant

(bryant_jeff@sbcglobal.net<mailto:bryant_jeff@sbcglobal.net>); Jim Nickel

(jlnickel@nflc.net<<mailto:jlnickel@nflc.net>>); Jim O'Banion

(jobaniondp@gmail.com<<mailto:jobaniondp@gmail.com>>); MIKE STEARNS

(mw.stearns@yahoo.com<<mailto:mw.stearns@yahoo.com>>); Randy Houk;

Roy.Catania@wonderful.com<<mailto:Roy.Catania@wonderful.com>>

Subject: SJR Exchange Contractors & SJR Resource Management Coalition's Comments on SJRRP Draft 2015 Revised Framework

Dear Sen. Feinstein, et al.,

Attached hereto are the comments of the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition (hereafter "Exchange Contractors") regarding the 2015 Framework for Implementation prepared by the USBR regarding the San Joaquin River Restoration Program. I am also enclosing a comment letter prepared by one the largest farmers in the Exchange Contractors service area. The SJRRP faces considerable challenges as it seeks to move forward. The financial challenge results from at least a 50% shortfall in the funding of the program and substantially increased cost estimates. When this program was being considered by Congress, NRDC estimated the cost of the program at \$250 million and reclamation estimated the cost at \$800 million. Reclamation's current cost estimate is \$1.5 billion and, as disclosed in the Framework, is based on very preliminary estimates.

The program also suffers from several technical challenges. Last week the program conducted its first science symposium. Numerous scientists employed by reclamation, the California Department of water resources, and others identified a number of significant and potentially fatal challenges. For example, unprecedented subsidence continues in the project area. The San

Joaquin River and adjacent lands are subsiding. According to DWR, it is practically impossible to engineer and construct facilities in light of subsidence that is currently at rates of at least three quarters of foot per year. Over the last few years, subsidence has been as much as 1 foot per year. Local area water managers have concluded that if the subsidence continues, then during flood flows it is likely at some point in the future that a warm water lake as large as 10 miles x 10 miles, i.e., 100 mi.² could result on and adjacent to the San Joaquin River upstream of the Merced River, thereby either totally precluding the ability of the program to proceed or resulting in a permanent trap and haul program.

Temperature in the River represents another significant challenge. Recent analysis discloses that temperatures are so high as to preclude program success without either the release of significant additional amounts of water over that agreed to in the settlement or the construction of a temperature control system at Friant Dam, which could well cost hundreds of millions of dollars.

Predation has also been determined to be well beyond expected levels. Based upon studies the past two years involving the release of tens of thousands of salmon into the upper River, the water literally churns with predation when these fish are released and survival is at extremely low levels. Further, the recapture of downstream migrating fish has so far proven to be highly unsuccessful. The past two years have involved using different technologies for fish recapture and the success rate is untenable for a trap and haul program.

The Exchange Contractors have made recommendations regarding how this program might proceed on a more affordable basis and one which could allow for the volitional passage of salmonids. The exchange contractors strongly recommend that the highest priority projects be: construction of Sack Dam/Arroyo Canal (once the subsidence issue is addressed); construction of the Mendota Pool bypassed together with a fish screen at the head of Mendota Pool; and the installation of seepage protection systems to prevent the flooding of adjacent lands. The Exchange Contractors further recommend that the Program immediately spend funds to address the subsidence problems being caused by farming east of the restoration area located outside of any established irrigation districts. Spending an estimated \$10m now could well save \$100m's in the future.

Finally, it is time to reassess the basis upon which the SJRRP is being developed. Given the above challenges, the Exchange Contractors urge that the stakeholders be reconvened to have frank discussions about how the SJRRP can proceed in an affordable and successful manner that meets the goals of all concerned.

Respectfully yours,

Steve Chedester

Joann White
San Joaquin River Exchange Contractors Water Authority
541 H Street/P.O. Box 2115
Los Banos, CA 93635
(209) 827-8616
(209) [REDACTED] - Mobile
(209) 827-9703 - Facsimile
Email: jwhite@sjrecwa.net<<mailto:jwhite@sjrecwa.net>>
Website: www.sjrecwa.net<<http://www.sjrecwa.net>>

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THOMAS M. BERLINER
DIRECT DIAL: +1 415 957 3333
PERSONAL FAX: +1 415 520 5835
E-MAIL: tmberliner@duanemorris.com

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MIRANDA & ESTAVILLO
SRI LANKA
ALLIANCE WITH
GOWERS INTERNATIONAL

June 15, 2015

Ms. Alicia Forsythe
Program Manager – SJRRP
Bureau of Reclamation
FrameworkComments@restoresjr.net

RE: San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition Comments on San Joaquin River Restoration Program Draft 2015 Revised Framework for Implementation (May 2015)

Dear Ms. Forsythe:

The San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition (collectively referred to hereafter as “Exchange Contractors”) submit the following comments to the Revised Framework for Implementation (May 2015) (“Framework”). This letter sets forth our general comments and the attached includes more specific comments. For the reasons set forth below, the Exchange Contractors urge Reclamation to reconsider the approach being taken in the Framework. Reclamation’s approach runs the great risk of failure of the SJRRP while ignoring a more feasible approach advocated by the local water agencies and landowners who intimately know the river and its adjacent lands.

The Exchange Contractors devoted considerable resources to respond to issues raised by the draft Framework and the working meetings conducted by Reclamation. We are appreciative that Reclamation attended meetings with the Exchange Contractors and believe Reclamation was sincere in its effort to include the thoughts and concerns of local landowners and water users. Nevertheless, it appears to us that Reclamation is still being held hostage by the other settling parties regarding implementation of the SJRRP. The Framework remains inconsistent with the negotiations that led to the Restoration Act and to the terms of the Act itself. The SJRRP is being developed backwards; putting fish in the San Joaquin River before constructing any improvements is contrary to logic, resource needs, the Settlement and the Restoration Act which requires the Secretary to implement the Settlement. Contrary to Reclamation’s assertions, both

Ms. Alicia Forsythe
Bureau of Reclamation
June 15, 2015

in the PEIS (deadlines are recommendations [PEIS, April 2011, pg. 1-4]) and more recently during the workshops for the Framework (some of the timelines are recommendations; others are mandates), there is no distinction among the deadlines under the Act; either all are guidelines/recommendations or all are mandatory, as directed by the phrase in the Settlement and Act, "The Secretary shall..."

As the Framework is being circulated for comment, there is no mention in the Framework regarding the apparent need for a temperature control system at Friant Dam. In the SJRRP-sponsored science symposium held on June 11-12, 2015, Reclamation and the fishery scientists presented information that either restoration flows need to be increased above those agreed to with Friant or a temperature control system needs to be installed. This is in part because the hybridized spring run being used in the Program are not as resilient as wild spring run. A temperature device at Lake Oroville was estimated to cost about \$200m. Whether the Friant system will be more or less is known. However, under any circumstance it will be expensive.

In addition to lack of progress on mandated improvements,, the SJRRP is underfunded and both the development and funding plans fail to address the \$700 million shortfall. At best, the foregoing results in our fears being realized, i.e., a half-built project akin to the drainage situation and reminiscent of the Auburn Dam fiasco. At worst, there will be ESA listed species in the river with little hope of survival and the issue of "take" will be at the forefront. In short, the Exchange Contractors expect Reclamation will honor its legal obligation to not impose involuntary costs on third parties that arise from the SJRRP. There are no ESA-listed species currently in the San Joaquin River upstream of the Merced River. The only means for these species to migrate to the upper portion of the river is due to SJRRP-related actions, e.g. flow, removal or modification of the Hills Ferry Barrier.

Unfortunately, the Framework has taken several steps backwards from where we were in 2012.

1) In the 2012 plan the Arroyo Canal Fish Screen and Sack Dam project was to be completed in 2013, which was 2 years before the Fish Hatchery was to reintroduce salmon in 2015. The 2015 version has the Fish Hatchery completion in 2019 and shifts the Arroyo Project completion back to 2021. In the 2012 Framework, Reclamation stated that Arroyo Canal was "very likely to entrain a large proportion of juvenile salmon. The 2015 Framework threatens to eliminate the temporary fish screen. Has Reclamation decided large number of juveniles will not be entrained or that loss of these fish is acceptable? Further, push the project back to 2021 prolongs the entrainment of juveniles for no apparent benefit to the SJRRP and an obvious loss to the fishery.

2) The Mendota Bypass Fish Screen into the Mendota Pool has been eliminated in the 2015 version. This will be fatal to as much as 30% of the fishery in flood years and up to 100% in dry years.

3) In the 2012 version the seepage projects were to be completed to 2000 cfs in 5 years by 2017. In the 2015 version the seepage projects are completed to 2500 cfs in 10 years by 2024. Improvements to 4500 cfs come after that. The seepage protection should be done at one time and not incrementally. The acquisition of parcels of property for flooding or seepage easements will expose the unacquired properties to damage.

4) The fish barrier below Mendota Pool has been eliminated in the 2015 version.

5) Program cost has increased from about \$1B in 2012 to \$1.5B in 2015, a 50% increase not attributable to inflation and with no plan as to where the \$700m shortfall will come from.

Despite the more accurate estimate of likely Program costs (which was close to the cost estimated by the Exchange Contractors several years ago), the core goal of the SJRRP, flow connectivity ~~that supports fish reintroduction, can be achieved within the available funds if the~~ Exchange Contractors' recommendations are adopted. The Phase 1 projects that provide the minimum fish passage up and down the river and allow restoration flows to be safely conveyed through the system to the Merced River confluence include: 1) Seepage Mitigation Actions to allow flows up to 4500 cfs, 2) Mendota Pool Bypass and Fish Screen, and 3) Arroyo Canal Fish Screen and Sack Dam Fish Passage. The SJRRP estimated cost for these three projects is \$388,548,000. Once these three highest priority projects are completed, then release of restoration flows and an increased chance for successful reintroduction of salmon can proceed. However, one potentially fatal problem must also be solved. Subsidence issues are affecting the SJRRP and no one has taken responsibility for solving the ever-increasing problem. A \$30 million fix now will solve what will become a several \$100 million problem and could result in the ~~creation of a new lake that would be fatal to the SJRRP.~~

Exclusive of the subsidence issue, the table on the next page sets forth the recommendation by the Exchange Contractors regarding implementation of the SJRRP improvements. The yellow highlighted costs are unfunded at this time.

Table 1
Phase 1 Project Prioritization
For Initiation of Restoration Flows and Fish Reintroduction

Priority	Phase I Projects	Proposed Action	Fisheries Benefit	Mitigation Protection/Justification	Completion Schedule	Cost (\$1000)
1	Seepage Actions	Seepage Improvements in Reaches 2B,3,4A, and Eastside Bypass to 4500 cfs	Allow release of restoration flows to promote fish passage, habitat development, and water temperature	Prevent crop seepage damage and exacerbating existing levee stability problems that exist even at low flows.	2015 – 2020	\$185,601
2a	Mendota Pool Bypass	Construct 4500 cfs Bypass Channel	Fish passage around Mendota Pool to avoid predation, entrapment, and warm water temperature	Prevent fish entrapment including steelhead migrating upstream	2015 - 2020	\$98,855
2b	Mendota Pool Fish Screen	Construct fish screen at river entrance to Mendota Pool	Prevent entrapment when Safe Joaquin River flows are entering Mendota Pool	Prevent fish entrapment	2015 - 2020	\$48,000

Priority	Phase I Projects	Proposed Action	Fisheries Benefit	Mitigation Protection/Justification	Completion Schedule	Cost (\$1000)
3	Permanent Arroyo Canal Fish Screen and Sack Dam Fish Passage	Construct new fish screen, fish ladder, and replace Sack Dam	Promote fish passage and prevent entrainment	Prevent fish entrainment including steelhead migrating upstream	2017 - 2020	\$28,808
	Initiate Restoration Flow and Fish Reintroduction	Construct Fish Facility	Introduce fish	Projects 1 through 3 complete	2020	\$13,167
4	Reach 2B Land Acquisition	Purchase land for restoration	Potential flood plain habitat	none	2020 - 2021	\$47,667
5	Reach 2B and Choychilla Bypass Structure Improvements	Construct low flow channel and improve levees to convey 4500 cfs. Restore riparian habitat	Flood plain habitat and fish passage. Provide adequate water temperature food resources	Prevent seepage damage and fish straying	2021 - 2025	\$136,733
6	San Mateo Culverts	Reconstruct San Mateo Road crossing	Promote fish passage	Prevent fish standing	2021 - 2022	\$9,701

Priority	Phase I Projects	Proposed Action	Fisheries Benefit	Mitigation Protection/Justification	Completion Schedule	Cost (\$1000)
7	Levee Stability Actions	Levee improvements to provide 4500 cfs flow capacity	Allow higher restoration flows to promote fish passage, habitat development, and water temperature	Stabilize levees to prevent failure due to increased frequency and magnitude of flows	2021 - 2026	\$296,837
8	Salt and Mud Slough Seasonal Barriers	Deploy fish barriers	Prevent straying into false migration pathways	Prevent fish stranding in sloughs	2021 – 2022	\$5,567
9	Reach 3 Fish Barrier	Construct barrier or alternative project to prevent fish stranding below Mendota Dam	Promote fish passage and prevent entrainment	Prevent fish standing	2023 – 2025	\$60,631
10	Lone Tree Fish Screen	Construct fish screen	Promote fish passage and prevent entrainment	Prevent fish entrainment	2023	\$1,011
	Phase II Projects	Proposed Action	Fisheries Benefit	Mitigation Protection	Schedule	

Ms. Alicia Forsythe
Bureau of Reclamation
June 15, 2015

Priority	Phase I Projects	Proposed Action	Fisheries Benefit	Mitigation Protection/Justification	Completion Schedule	Cost (\$1000)
1	Eastside Bypass Improvements	Construct low flow channel	Facilitate fish passage	No use of Reach 4B1 for restoration flows	2025 – 2030	\$233,999
2	Chowchilla Fish Bifurcation Fish Passage	Modify structure to allow fish passage	Facilitate fish passage	Prevent fish stranding	2025 – 2030	\$19,700
3	Gravel Pits	Fill or isolate pits from river	Reduce predation and improve water temperature	May be accelerated if demonstrated as critical to fish survival	2025 – 2030	\$2,969

Ms. Alicia Forsythe
Bureau of Reclamation
June 15, 2015

As Reclamation is aware, the Exchange Contractors are unequivocal in the need to include a fish screen at the head of the Mendota Pool. While the 4(d) rule protects water agencies and landowners from take under the ESA, nothing protects the fish, many of which will perish in flood and very dry years. The Exchange Contractors do not want to see these fish die needlessly, nor do they want to be the target of accusations that their operations are interfering with the success of the SJRRP. Based on the poor to dismal result of the trap and haul program in the past two years, with only 200+ fish recaptured this year out of an expected recapture of about 50,000+/- fish, the need to protect juveniles is imperative.

The fish screen is a relatively low cost item, being no more than about 2% of total Program costs, i.e. about \$29m. Refusal to build the fish screen reneges on a promise made by Reclamation to the Exchange Contractors. We previously have provided Reclamation with a copy of the letter written by the Regional Director promising a fish screen or other facility that would accomplish the same purpose. We trust Reclamation will reconsider and reverse its position regarding the screen.

The Exchange Contractors appreciate this opportunity to comment on the Framework. Attached are our comments to specific sections of the Framework.

Very truly yours,



Thomas M. Berliner
Duane Morris LLP,
Counsel for the SJRECWA and SJRRMC

cc: Honorable Dianne Feinstein
Honorable Barbara Boxer
Honorable Kevin McCarthy
Honorable Jim Costa
Honorable Jeff Denham
Honorable Devin Nunes
Honorable David Valadao
Hon. Michael Connor, Dep. Sec. DOI
Estevan Lopez, Commissioner
David Murillo, R.D., USBR

Exchange Contractor Specific Comments

Exec Summary

Page ES-1 – The Framework states it provides a “more realistic schedule and associated future funding needs” for the SJRRP. This issue was commented upon by the Exchange Contractors regarding the draft PEIS. This more realistic approach has not been analyzed under NEPA. Reclamation may not change its implementation of the SJRRP without first conducting environmental review.

Page ES-1 - The schedule is inconsistent with the Restoration Act’s mandate to construct the Phase 1 and Phase 2 projects by December 2014 and 2016, respectively.

Page ES-1 Table ES-1 – The table lists the Temporary Back Dam Passage Project as part of the 5-year vision, but the temporary project is not included in the 5-year Vision project lists on pages ES-7 or Page 4-1. The actions and cost for the temporary project have also been removed from Table 4-1 and Table 4-2a. In the 2012 Framework, Reclamation stated that Arroyo Canal was “very likely to entrain a large proportion of juvenile salmon. The 2015 Framework threatens to eliminate the temporary fish screen. Has Reclamation decided large number of juveniles will not be entrained or that loss of these fish is acceptable? Further, push the project back to 20121 prolongs the entrainment of juveniles for no apparent benefit to the SJRRP and an obvious loss to the fishery.

Appendix D page 7 and 8 notes that a series of physical barriers including Eastside Bypass Control Structure, Dam McNamara Road, and the Merced Wildlife Refuge weirs are passage barriers to Chinook salmon, steelhead, sturgeon, and lamprey. Therefore, these structures will exclude the ESA-listed fish species from reaching Reaches 2B and 3, except during possible flood flow conditions, until 2020. Further analysis of run timing and physical barriers is needed to confirm that these barriers will block passage of ESA-listed species. Further, the rationale assumes there will not be a finding that with the presence of ESA-protected species, these facilities that are blocking passage do not cause take and must be removed.

Page ES-2 Table ES-2 – Note 3 explains that the Mendota Pool Fish Screen costs are excluded. Further analysis of run timing and physical barriers is needed to confirm that these barriers will block passage of ESA-listed species. Further, Reclamation’s rationale regarding why a fish screen is not needed is incorrect. Reclamation assumes fish will only enter the Pool in flood years, which on, average occur about one in five years. Yet, there can be multiple consecutive years of flood flows, resulting in year after year losses of fish of as much as 30% of the population. In addition, due to the new Delta hydrology, it is expected that calls on Friant will increase in future years. Reclamation should not assume hydrology will not require deliveries from the San Joaquin River to the Exchange Contractors.

Page ES-3 line 34 - 36 – ~~Consideration of any “temporary actions” must be analyzed pursuant to~~ NEPA and must not compromise water supply and flood operations or cause unintended impacts due to delayed implementation.

Page ES-4 line 27 - 30 – Because of the long term implementation period, all costs should be estimated for mid-point of construction and then adjusted for FY 2015 dollars. Since costs are based on preliminary designs, Reclamation should indicate possible cost increases that could be realized, i.e. if in Reclamation’s experience preliminary costs may underestimate by 100%, that information should be set forth.

Page ES-5 – The omission of a fish screen at the Mendota Pool jeopardizes the success of the fish reintroduction program. It also places the Exchange Contractors in the position of being blamed for fish kills when flood flows or dry year flows go to the Pool.

Page ES-6 line 5-7 – Designating costs to the State should not be assumed by Reclamation as a means of funding the SJRRP. The SJRRP is not the State’s responsibility. If costs are not picked up by the State, Reclamation will be liable for them to the extent to facilities are necessary for the Program to be implemented. As noted on lines 20-21, future funding is subject to future appropriations or approvals. The State’s willingness to fund the SJRRP in light of competing expenses is not certain.

Page ES-6 line 8 and 9 - The Framework needs to clearly define the specific O&M costs that are needed to implement the Settlement, including facilities and increased O&M to maintain flood conveyance due to increased sedimentation and vegetation management.

Page ES-7 line 3 – 5 – Phase 1 projects that allow restoration flows to be safely conveyed through the system to the Merced River confluence should be the highest implementation priority. Reaches 1, 2 and 3 of the San Joaquin River provide critical water supply conveyance for the delivery of water under existing water rights and the Exchange Contract. Restoration actions must be carefully planned and designed to provide flexibility in water supply operations, maintain water quality, and provide endangered species protection throughout the river system during construction and after program completion. Priority Phase 1 projects include 1) Seepage Mitigations Actions, 2) Mendota Pool Bypass and Fish screen, and 3) Arroyo Canal Fish Screen and Sack Dam Fish Passage. Further, the subsidence issue must be addressed before it causes further damage to the San Joaquin River and flood control ~~by system~~.

Page ES-7 line 29 – 33 – Annual Federal Appropriations from \$34 to \$53 million appears speculative and reinforces the need for comprehensive planning to avoid unintended impacts due to significant funding constraints. Further, as the funding shortfall is at least \$700m, the timeframe for development of the Phase 1 and Phase 2 improvements should be extended by the additional period assuming minimum federal and state funding. At \$35m/yr, it will take 20 years to realize sufficient appropriations – without including inflation. However, all of these numbers need to be adjusted both for inflation, considering the Program is going to be developed over the next 20-30 years (at 3%, Program costs increase at the rate of \$45m/year), and taking into

account the preliminary nature of the estimates (we note the 100% increase in costs over Reclamation's representation's to Congress, a 600% increase over NRDC's estimate and a 50% increase over Reclamation's estimate in the 2012).

Page ES-9 line 36-37 – The lack of any funding security at the 15-year period highlights the need to put the key projects that assure fish passage at the front end of the schedule. The expectation of continuous funding at the \$34-\$53m (2015) range is unprecedented. The funding shortfall raises the specter of Program failure. Reclamation set forth in the Record of Decision that it would develop a funding shortfall contingency plan. The Framework does not include a contingency plan.

Page ES-11 – line 7 and 8 – Development of a plan for appropriate sequencing should allow flows to be safely conveyed through the system and maximize potential fish survival by implementing priority Phase 1 projects noted above prior to release of restoration flows and reintroduction of fish.

Main Report

Page 2-1 line 25-28 - The Five Year Vision only focuses on fish reintroduction and water management. The Restoration Act requires the Phase 1 and Phase 2 projects to be completed expeditiously. The Exchange Contractors urge that the key projects it has identified be commenced within the first five year period.

Page 3-5 line 24, et seq. – Reclamation states that the SJRRP is entitled to a portion of the \$475m made available by Proposition 1, because Reclamation claims the State is legally obligated to fund the Settlement. Since the State is not a party to the Settlement and neither Proposition 1 nor the legislature have committed the State to the SJRRP, on what basis is the State “obligated” to the SJRRP?

Page 3-7 line 12-16 – Seepage management is an adverse environmental impact of the SJRRP. It is not a “benefit” to Third Parties. Seepage management is an obligation of the SJRRP to mitigate its impacts.

Page 3-8 line 17-29 – The State is responsible for providing flood control for the San Joaquin River. It is not responsible for conveying restoration flows. The SJRRP must not cause adverse impacts to the State's ability to provide flood control.

Page 3-9 line 11 and 12 – The Framework needs to clearly define the specific O&M costs that are needed to implement the settlement, including facilities and increased O&M to maintain flood conveyance due to increased sedimentation and vegetation management.

Page 4-1 Lines 3 - 7 – Phase 1 projects that allow restoration flows to be safely conveyed through the system to the Merced River confluence should be the highest implementation priority. These projects include 1) Seepage Mitigations Actions, 2) Mendota Pool Bypass and Fish screen, and 3) Arroyo Canal Fish Screen and Sack Dam Fish Passage. Subsidence needs to be addressed.

Page 4-4 Table 4-2a – The line item for Reach 4B/ESB/MB Channel and Structural Improvements needs to account for any additional O&M costs experienced by the Lower San Joaquin Levee District due to restoration flow releases.

Page 4-13 Lines 3- 8 – Seepage mitigation actions should be implemented on a comprehensive system-wide basis to allow flows up to 4500 cfs to prevent unintended seepage impacts due to incremental improvements. Further, coming through once to accomplish seepage protection is more economical than incremental improvements.

Page 4-27 Lines 22- 25 – Modifications to the Eastside Bypass Control Structure must allow complete closure of the structure under flood flow conditions to account for downstream inflows from the Merced area.

Page 4-28 Line 11 - Fish passage improvements and screening facilities are needed to allow fish safe passage around or over existing structures. These facilities include screens on diversions to prevent entrainment, reconstruction of road crossings, and construction of fish barriers on sloughs. These facilities should be designed in accordance with NMFS Fish Screening Criteria for Anadromous Salmonids, criteria established by the CDFW, other applicable criteria at the time of construction, and in accordance with established professional engineering practices. If fish are introduced prior to completion of critical fish screen facilities, spring-run Chinook salmon, fall run Chinook salmon, steelhead or other endangered species may migrate unstream from the Merced confluence and become entrained in water intake facilities.

Page 5-4 Table 5-1 – The table shows O&M for the Arroyo Canal and Sack Dam Project in FY 2022 through 2024, but Table 5-2a on page 5-5 only shows construction costs and does not include any budget to support O&M starting in FY 2022.

Page 5-17 Lines 5 – 9 - Seepage mitigation actions should be implemented on a comprehensive system-wide basis to allow flows up to 4500 cfs to prevent unintended seepage impacts due to incremental improvements.

Page 5-21 Lines 6- 11 – Modifications to the San Joaquin River Bifurcation Structure must allow complete closure of the structure under flood flow conditions to account for downstream inflows from the Kings River to Mendota Pool.

Page 5-24 Lines 23 and 24 – In years with lower restoration flows, barriers will be required to prevent straying and stranding in Salt and Mud sloughs.

Page 6-3 Table 6-1 - The table shows O&M for the Arroyo Canal and Sack Dam Project in FY 2025 through 2029, but Table 6-2a on page 6-4 does not include any budget to support O&M starting in these years.

Page 6-15 Lines 29 and 30 - Fish screening facilities are needed at Mendota Pool to allow fish safe passage around the Pool under all potential future operational and flow conditions. With a total estimated program cost of \$1.539 million, it seems very short sighted to eliminate plans to

construct a critical facility that is estimated to cost about \$29 million or less than 2% of the total program budget.

Page 6-16 Lines 5 – 8 – A fish screen facility is needed at Lone Willow Slough to allow fish safe passage under all potential future operational and flow conditions. With a total estimated program cost of \$1.539 million, it seems very short sighted to eliminate plans to construct a critical facility that is estimated to cost about \$0.85 million or less than 0.1 % of the total program budget.

Page 6-18 Line 6 and 7 – Who will be responsible for O&M of these facilities and maintenance of channel conveyance capacity?

Page 8-3 Lines 17 – 19 – The development of an updated Fisheries Implementation Plan should be completed before the SJRRP commits to an implementation framework that may marginalize potential success by introducing salmonids into the system prior to completion of critical Phase 1 facilities.

Page 8-5 Lines 18 - 23 – It seems unreasonable to introduce juveniles into the system when survival rates are expected to be low, and Phase 1 projects still need to be completed to provide adequate water temperature, water depth, spawning habitat, rearing habitat, holding habitat, reduce predation, and prevent stranding and entrainment. Observations of survival based on flood conditions does not indicate that juveniles can survive under restoration flow conditions.

The 10(a)(1)(A) permit issued by NMFS is limited to five years. NMFS disallowed the SJRRP to take wild stock of spring run Chinook salmon from the stream systems USFWS was hoping to use due to the tenuous viability of those populations. NMFS was limited to taking hatchery spring run from the Feather River hatchery. These “spring run” are hybridized with Feather River fall run. Relying on these hybridized fish has not yet developed a true San Joaquin River spring run and it is uncertain whether that will ever happen from this population. Further, these Feather River fish are far more temperature sensitive than wild spring run. This temperature sensitivity will require further temperature management at Friant, either via a temperature control system or increased flow releases. Should NMFS be permitted to take true wild spring run from the more marginal populations, any loss of those fish will be untenable and heighten the need to fish screening.

The estimated cost for the trap and haul program has decreased by almost two-thirds. What accounts for this decrease? Based on the lack of functioning technology to recapture out-migrating fish, a decrease in the budget seems unwise at this time.

Page 8-6 Lines 9- 11 – If the key barriers are not addressed by FY 2019, due to funding constraints or other implementation issues, the program could wind up with a long term trap and haul operation that is not beneficial to the restoration goal.

Page 8-11 Lines 28 – 30 – The key uncertainties to building fall-run and spring-run salmon populations need to be clearly quantified to assess the potential value of reintroducing fish prior to completing any of the Phase 1 projects.

Appendix D Endangered Species Act Considerations in Reaches 2B and 3

Page 8 Lines 4-6 - Further analysis of run timing and physical barriers is needed to confirm that these barriers will block passage of ESA-listed species. Assumptions regarding “take” need to allow for the possibility that they are wrong.

Page 9 Lines 6 - 8 - The effectiveness of the Hills Ferry Barrier and associated trap and haul efforts has been questioned. The October 2011 Reclamation report on the Evaluation of the Hills Ferry Barrier found that a number of near and long-term structural and non-structural modifications are necessary to make the barrier more reliable including, 1) move the barrier downstream, 2) improvements to reduce erosion, 3) installation of a concrete sill to provide a barrier foundation, and 4) removal of floating hyacinth.

Page 9 Lines 21 – 23 - There is a risk of taking ESA-listed species under existing flood flow conditions, but this risk will significantly increase with the introduction of Restoration flows, as species will now be able to work their way further upstream on a regular basis with restoration flows reaching the Merced Confluence.

Page 11 Lines 20 - 22 - Fish screen facilities are needed at Mendota Pool to allow fish safe passage around the Pool under all potential future operational and flow conditions.

Page 11 Lines 22 – 25- With the significant uncertainty regarding future Reclamation water supplies from the Delta, supplying water from Friant Dam to satisfy the Exchange Contract is likely to become a more frequent operation than it has been historically.

Page 12 Lines 2 - 5 - There is a risk of taking sturgeon under existing flood flow conditions, but this risk will significantly increase with the introduction of Restoration flows, as species will now be able to work their way further upstream on a regular basis with restoration flows reaching the Merced Confluence.

Page 12 Lines 6 – 8 – With the significant uncertainty regarding future Reclamation water supplies from the Delta, supplying water from Friant Dam to satisfy the Exchange Contract is likely to become a more frequent operation than it has been historically.

Page 12 Lines 36 - 38 - There is a risk of taking Lamprey under existing flood flow conditions, but this risk will significantly increase with the introduction of Restoration flows, as species will now be able to work their way further upstream on a regular basis with restoration flows reaching the Merced Confluence.

Page 12 Lines 39 - 42- With the significant uncertainty regarding future Reclamation water supplies from the Delta, supplying water from Friant Dam to satisfy the Exchange Contract is likely to become a more frequent operation than it has been historically.

Page 13 Lines 20 -21 – The ESA options listed in this section would most likely take significant time and budget to pursue. However, the Exchange Contractors are very interested in pursuing additional 4(d) rules regarding the future presence of ESA-protected species. The additional rules will be essential to avoid imposing involuntary costs on third parties. The rules need to be in place prior to the species appearing.



15701 Highway 178 • P. O. Box 60679 • Bakersfield, CA 93386-0679
(661) 872-5050 • Fax: (661) 872-7141

June 15, 2015

Ms. Alicia Forsythe
Program Manager – SJRRP
Bureau of Reclamation

FrameworkComments@restoresjr.net

RE: San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource management Coalition
Comments on San Joaquin River Restoration Program Draft 2015 Revised Framework for Implementation (May 2015).

Dear Ms. Forsythe:

This entire Framework document is flawed for three main reasons. One flaw you recognize in the document, one you mention by glazing over the implications, and one you fail to address even though you know it exists.

As you acknowledge, the funding is inadequate, even when you include optimistic, speculative sources. And, as acknowledged, many of your cost estimates are averages since you don't know what exactly is needed to mitigate the impacts and to construct the projects. How the Bureau can proceed with a project that is so underfunded is beyond belief.

You mentioned subsidence, but gloss over the fact that it will have a devastating effect on the project. The project cannot continue to go on and ignore the reality of subsidence. To state that it is someone else's problem and that "they" will provide the necessary funding is an unrealistic solution. To continue to spend public funds on a project that will fail is criminal.

Paradise is the most fish species held in Los Angeles, it seems it is widely accepted by the scientists/biologists

[REDACTED]

From: Jason Peltier

Sent: Wednesday, June 17, 2015 9:58 AM

To: Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt; Ed Manning; Carolyn Jensen

CC: Johnny Amaral

Subject: Fwd: Huffman - Uses same argument strategy he blames others for using

FYI

Begin forwarded message:

From: Mike Wade <mwade@farmwater.org>

Date: June 17, 2015 at 9:56:42 AM PDT

To: Jason Peltier <jpeltier@westlandswater.org>, Ara Azhderian

<Ara.Azhderian@sldmwa.org>, Brent Walthall <bwalthall@kcwa.com>, Gayle Holman

<gholman@westlandswater.org>, Brandon Souza <bsouza@farmwater.org>, Lindsay Ching

<lching@farmwater.org>

Cc: Mike Henry <mhenry@farmwater.org>, Brandon Souza <bsouza@farmwater.org>, Lindsay

Ching <lching@farmwater.org>

Subject: Huffman - Uses same argument strategy he blames others for using

Huffman accuses House Republicans of dusting off old political arguments for drought solutions and then uses same dusty environmental argument strategy about gutting environmental protections.

<http://www.sacbee.com/opinion/op-ed/soapbox/article24664105.html>

California's water strategy deserves an open debate and real solutions

House Republicans want to weaken environmental laws and gut fishery protections

Serious, comprehensive legislation needed during fourth year of drought

Bill reflects four basic principles that should guide Congress

BY JARED HUFFMAN

Special to The Bee

In response to the worst drought in our state's long memory, our public institutions – with one unfortunate exception – are stepping up.

Gov. Jerry Brown and the Legislature passed long-overdue groundwater and sustainable water investments through last year's \$7.5 billion water bond. Local governments and water districts are launching conservation plans to preserve dwindling water supplies. The Obama administration is providing millions in emergency grants to drought-stricken communities and farmers.

Rep. Jared Huffman

Rep. Jared Huffman | U.S. HOUSE OFFICE OF PHOTOGRAPHY

But even though natural disasters typically garner bipartisan congressional responses, **House Republicans have treated the drought as a political opportunity instead of a moral imperative. They've dusted off the same political agenda they've pursued for years – weakening environmental laws, gutting fishery protections and redirecting water needed by other regions – and tried to sell it as a drought response.**

California deserves better than the predictable “blame the fish” carnival. We cannot condemn “inconvenient” salmon runs to extinction, pre-empt state water rights, or declare winners and losers among the state’s drought-stricken regions.

That’s why I developed the kind of serious, comprehensive legislation this crisis demands.

Right now, that means providing emergency funding to stretch existing water supplies: deploying efficient irrigation technology, drilling wells and building pipelines. It also means helping out-of-work farmworkers and combating upstream water theft on federal lands. We need to act – right now.

Our long-term needs are even greater. Scientists warn we’re likely to experience more frequent and severe droughts due to climate change, stressing our environment and straining water supplies. We must become more drought resilient, and we can start with our chronically underfunded clean-water infrastructure. By fully funding existing programs, we can quickly upgrade treatment facilities, repair leaking pipes, and improve urban and agricultural water use efficiency. We need to rethink how we manage headwater forests and watersheds and recharge depleted groundwater aquifers.

California – the home of innovation – should be using cutting-edge drought responses. The Army Corps of Engineers needs to join the 21st century and operate reservoirs based on the latest science and satellite forecasts, not crude flood predictions from 1960s-era manuals. We need major federal investments to clean up contaminated aquifers, improve desalination technology and dramatically expand water recycling.

We also need to plan for the worst.

We call in the National Guard when floods overwhelm a state, but when communities run dry, we have no plans to deploy military resources – including mobile desalination technology. Disaster response agencies should start planning for the worst right now. Fisheries managers should prepare, too, for years of warmer, depleted streams. We can’t just keep lurching from one crisis to the next.

My bill reflects four basic principles that should guide Congress in responding to this and future droughts:

1. Do no harm. Ours is a complex system, and we should not redirect impacts or micromanage it from Washington.
2. No water wars. End attempts to gut environmental laws and take water from other regions. Solutions must respect environmental and water quality laws, and benefit every region impacted by this drought.
3. Think long-term. We should respond not just to the immediate crisis but build drought resiliency for the future.

4. Process matters. Successful water initiatives require transparency, inclusiveness and deliberation. Backroom deals and secret water grabs invariably create more problems than they solve.

I've been reaching out to stakeholders, economists, farmers, conservationists and California's top water managers to make my bill the best it can be. Before I formally introduce it, I'd like you to join them in giving your feedback. Please visit Huffman.house.gov/drought to read this draft legislation.

Our water future deserves an open debate leading to real solutions. I'll hope you'll join in.

Rep. Jared Huffman, D-San Rafael, represents California's 2nd Congressional District.

Read more here: <http://www.sacbee.com/opinion/op-ed/soapbox/article24664105.html#storylink=cpy>

Mike Wade
California Farm Water Coalition
6133 Freeport Boulevard, FL2
Sacramento, CA 95822
(916) 391-5030
mwade@farmwater.org
www.farmwater.org

From: Jason Peltier

Sent: Wednesday, June 24, 2015 7:02 AM

To: Dennis Cardoza; Joe Findaro; Denny Rehberg; David Bernhardt; Ed Manning; Carolyn Jensen

CC: Tom Birmingham; Dan Nelson; Ara Azhderian; Jon Rubin

Subject: Drought tops Bay Area residents' list of concerns, poll finds - SFGate

<http://www.sfgate.com/bayarea/article/Drought-tops-Bay-Area-residents-list-of-6345045.php>

To: Dan Nelson; David Bernhardt; David Houston; Denny Rehberg; Gary Sawyers; Johnny Amaral; Kole Upton; Mark Turmon; Michael D. Brunn; Steve Patricio; Susan Ramos; T birmingham; Trajan Soares
Subject: FW: R.I.P. California (1850-2016): What We'll Lose And Learn From The World's First Major Water Collapse

<http://www.feelguide.com/2015/03/22/r-i-p-california-1850-2016-what-well-lose-and-learn-from-the-worlds-first-major-water-collapse/>

Sent from my Verizon Wireless 4G LTE DROID

From: Jason Peltier
Sent: Monday, June 29, 2015 8:04 AM
To: Johnny Amaral; Dennis Cardoza; Joe Findaro; David Bernhardt; Ed Manning; Gayle Holman
CC: Tom Birmingham
Subject: Fwd: Crapolla

Begin forwarded message:

From: "Dan Keppen" <dankeppen@charter.net>
Date: June 29, 2015 at 7:59:38 AM PDT
To: <jpeltier@westlandswater.org>, "Cannon Michael" <cannon@bfarm.com>, "Ara Azhderian" <Ara.Azhderian@sldmwa.org>
Subject: FW: Crapolla

FYI

-----Original Message-----

From: Joe Raeder [<mailto:JRaeder@tfgnet.com>]
Sent: Friday, June 26, 2015 12:45 PM
Subject: Crapolla

A friend sent this to me.

ThinkProgress: Republicans Introduce Bill Based On The Idea That Environmentalists Caused California's Drought.
<http://google.com/newsstand/s/CBIw9LLCjSA>

From: Karen Clark

Sent: Thursday, July 2, 2015 7:11 AM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; Catherine Karen; Dan Pope; 'David Bernhardt'; Dennis Cardoza; Denny Rehberg; 'Ed Manning'; Emily Lynn Smith; Erick Mullen; 'Gayle Holman'; 'Jason Peltier'; Jim Watson; 'Joe Findaro'; Johnny Amaral; 'Mike Burns'; Pamela Russell; Sheila Greene; 'Susan Ramos'

Subject: PR/Legislation Conference Call Tomorrow

All,

I am not certain if Tom wants to have a PR/Legislation Conference Call tomorrow. He is on vacation today and we did not discuss this call prior to his leaving. He isn't taking any calls or emails today so I won't be able to get a definite answer. Please call in tomorrow morning however if he is not on the call tomorrow morning, we can assume the call has been canceled.

If you have any questions, please let me know.

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Johnny Amaral

Sent: Thursday, July 2, 2015 7:20 AM

To: Karen Clark

CC: Alison MacLeod; Carmela McHenry; Carolyn Jensen; Catherine Karen; Dan Pope; David Bernhardt; Dennis Cardoza; Denny Rehberg; Ed Manning; Emily Lynn Smith; Erick Mullen; Gayle Holman; Jason Peltier; Jim Watson; Joe Findaro; Mike Burns; Pamela Russell; Sheila Greene; Susan Ramos

Subject: Re: PR/Legislation Conference Call Tomorrow

The call is off for tomorrow

Best,

Johnny Amaral

On Jul 2, 2015, at 7:11 AM, "Karen Clark" <kclark@westlandswater.org> wrote:

All,

I am not certain if Tom wants to have a PR/Legislation Conference Call tomorrow. He is on vacation today and we did not discuss this call prior to his leaving. He isn't taking any calls or emails today so I won't be able to get a definite answer. Please call in tomorrow morning however if he is not on the call tomorrow morning, we can assume the call has been canceled.

If you have any questions, please let me know.

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Craig Manson
Sent: Thursday, July 2, 2015 3:46 PM
To: David Bernhardt; 'Gary Sawyers'
Subject: FW: Resignation

FYI

From: Craig Manson [mailto:cmanson@westlandswater.org]
Sent: Thursday, July 02, 2015 2:15 PM
To: Don Peracchi; 'Gary Esajian'; 'Daniel Errotabere'; Frank Coelho Jr.; Larry Enos; Todd Neves; Sarah Clark Woolf; Jim Anderson; Alan Sano; Tom Birmingham; Jason Peltier; Susan Ramos (sramos@westlandswater.org); Sheila L. Greene; James Watson; Johnny Amaral
Cc: Russ Freeman (rfreeman@westlandswater.org); Karen Clark; Rose Schlueter
Subject: Resignation

I resign as General Counsel of Westlands Water District effective 15 August 2015. My last day in the office will 31 July 2015. The reason for the two week difference is that I have two home closings (one as buyer; one as seller) set for 31 July; and I have about 240 hours of annual leave.

Craig Manson

Craig Manson
General Counsel
Westlands Water District
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
916-321-4225 (o)
916-256-2419 (c & o)
916-844-4979 (c)

My Assistant is Rose Schlueter, 916-321-4525, rschlueter@westlandswater.org

From: Gary Sawyers
Sent: Thursday, July 2, 2015 3:58 PM
To: Craig Manson
Subject: RE: Resignation

Craig:

I had heard that you were contemplating leaving the district, but had hoped that was just a rumor. You have been an incredibly valuable asset to Westlands, and to the water community in general, but more than that you have always been a joy to work with. Rarely have I encountered anyone with your extraordinary judgment, wisdom, insight and humanity. You will be missed professionally and personally.

Gary

Gary W. Sawyers
Bolen Fransen Sawyers LLP
652 West Cromwell Avenue, Suite 101
Fresno, CA 93711
559.226.8177, Extension 161 (o)
559.360.9003 (c)
559.438.1781 (f)
gws@bolenfransen.com

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From: Craig Manson [<mailto:cmanson@westlandswater.org>]
Sent: Thursday, July 02, 2015 3:46 PM
To: David Bernhardt; Gary Sawyers
Subject: FW: Resignation

FYI

From: Craig Manson [<mailto:cmanson@westlandswater.org>]
Sent: Thursday, July 02, 2015 2:15 PM
To: Don Peracchi; 'Gary Esajian'; 'Daniel Errotabere'; Frank Coelho Jr.; Larry Enos; Todd Neves; Sarah Clark Woolf; Jim Anderson; Alan Sano; Tom Birmingham; Jason Peltier; Susan Ramos (sramos@westlandswater.org); Sheila L. Greene; James Watson; Johnny Amaral
Cc: Russ Freeman (rffreeman@westlandswater.org); Karen Clark; Rose Schlueter
Subject: Resignation

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Craig Manson
Craig Manson
General Counsel
Westlands Water District

400 Capitol Mall, 27th Floor
Sacramento, CA 95814
916-321-4225 (o)
916-256-2419 (c & o)
916-844-4979 (c)

My Assistant is Rose Schlueter, 916-321-4525, rschlueter@westlandswater.org

From: David Bernhardt
Sent: Friday, July 3, 2015 7:46 AM
To: Craig Manson
CC: Gary Sawyers
Subject: Re: Resignation

Craig: Thank you for the heads up.

Clearly, your resignation is big loss for Westlands. You have had such a remarkable career of public service from the Academy to federal, state and local government --it's stunning. Moreover, you have a legacy of people who have learned so much from simply watching you lead. In fact, last week I had dinner with Jon Rubin in DC, and we were both describing takeaways we have received from watching you work.

Despite the loss to Westlands, I'm also hopeful this means we might get to brainstorm a bit more about CESAR. I am perpetually amazed and great duo at the foresight you had for the idea to form it.

Have a great Independence Day!

Best,
David

David Bernhardt


On Jul 2, 2015, at 6:46 PM, Craig Manson <cmanson@westlandswater.org> wrote:

FYI

From: Craig Manson [<mailto:cmanson@westlandswater.org>]
Sent: Thursday, July 02, 2015 2:15 PM
To: Don Peracchi; 'Gary Esajian'; 'Daniel Errotabere'; Frank Coelho Jr.; Larry Enos; Todd Neves; Sarah Clark Woolf; Jim Anderson; Alan Sano; Tom Birmingham; Jason Peltier; Susan Ramos (sramos@westlandswater.org); Sheila L. Greene; James Watson; Johnny Amaral
Cc: Russ Freeman (rffreeman@westlandswater.org); Karen Clark; Rose Schlueter
Subject: Resignation

I resign as General Counsel of Westlands Water District effective 15 August 2015. My last day in the office will 31 July 2015. The reason for the two week difference is that I have two home closings (one as buyer; one as seller) set for 31 July; and I have about 240 hours of annual leave.

Craig Manson

Craig Manson
General Counsel
Westlands Water District
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
916-321-4225 (o)
916-256-2419 (c & o)
916-844-4979 (c)

My Assistant is Rose Schlueter, 916-321-4525, rschlueter@westlandswater.org

From: Johnny Amaral

Sent: Monday, July 6, 2015 9:59 AM

To: David Bernhardt; Joe Findaro; Dennis Cardoza; Catherine Karen; Denny Rehberg

Subject: FYI - Tom will be on the 10 am call

From: Johnny Amaral
Sent: Monday, July 6, 2015 4:05 PM
To: Joe Findaro; David Bernhardt
Subject: Fwd: Hey bud

Thursday at 4:30.

Best,

Johnny Amaral

Begin forwarded message:

From: "Chatterjee, Neil (McConnell)" <Neil_Chatterjee@mcconnell.senate.gov>
Date: July 6, 2015 at 3:49:12 PM PDT
To: "'jamaral@westlandswater.org'" <jamaral@westlandswater.org>
Subject: Re: Hey bud

Thursday at 430 work?

----- Original Message -----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Monday, July 06, 2015 03:08 PM
To: Chatterjee, Neil (McConnell)
Subject: Hey bud

Were coming to DC again this week. Are you rested enough from Disneyworld to spend about 20 minutes with Tom and I on either wednesday or thursday?

Best,

Johnny Amaral

From: Jason Peltier
Sent: Tuesday, July 7, 2015 9:23 AM
To: Ara Azhderian; Dennis Cardoza; Joe Findaro; Johnny Amaral; David Bernhardt
Subject: Fwd: July 2015 Executive Director's Report
Attachments: memo070615.docx; Untitled attachment 10023.htm

Begin forwarded message:

From: "Dan Keppen" <dankeppen@charter.net>
Date: July 6, 2015 at 8:51:00 PM PDT
To: "Bill Kennedy" <[REDACTED]>, "Chris Hurd" <[REDACTED]>, <[REDACTED]>, "Don Schwindt" <[REDACTED]>, "Harold Mohlman" <[REDACTED]>, "Harvey Bailey" <[REDACTED]>, "Marc Thalacker" <manager@tsidweb.org>, "Pat O'Toole" <[REDACTED]>, "Ron Rayner" <[REDACTED]>, "Sandy Denn" <[\[REDACTED\].com](mailto:[REDACTED].com)>, "Tom Schwarz" <[REDACTED]>, "Antonio Ortega" <aortega@iid.com>, "April Snell" <aprils@owrc.org>, "Bill Plummer" <[REDACTED]>, "Brad Wind" <bwind@ncwcd.org>, "Bruce Whitehead" <brucew@southwesternwater.org>, "Cary Keaten" <ckeaten@sidwater.org>, "Chane Grant" <cgrant@nmid.org>, "Chris Udall" <Chris@agribusinessarizona.org>, "Chris Voight" <[REDACTED]>, "Clifford Searle" <cntsearle@pmt.org>, "Clinton Pline" <[REDACTED]>, "Dale Swensen" <[REDACTED]>, "Dan Laursen" <[REDACTED]>, "Daren Coon" <DCoon@nmid.org>, "Dave Solem" <dsolem@scbid.org>, "David Mansfield" <[REDACTED]>, "Dean Edgar" <[REDACTED]>, "Don Kraus" <dkraus@cnppid.com>, "Eric Quinley" <equinley@friantwater.org>, "Gary Esslinger" <gesslinger@ebid-nm.org>, "Gering Ft Laramie ID" <[REDACTED]>, "Gering-ft laramie ID #2" <[REDACTED]>, "Grant Ward" <grant@msidd.com>, "Ivan Ray" <ivanr@davisweber.org>, "James Broderick" <jwb@secwcd.com>, "Jamie Mills" <[REDACTED]>, "Jason Peltier" <jpeltier@westlandswater.org>, "Jeff Sutton" <jsutton@tccanal.com>, "Joe Rutledge" <joe.rutledge@tvid.org>, "Ken Curtis" <[REDACTED]>, "Larry Bauman" <lbauman@cvpwater.org>, "Larry Hicks" <[REDACTED]>, "Mark Atlas" <matlas@jmatlaslaw.com>, "Matt Harris" <[REDACTED]>, "Matt Lukasiewicz" <mluk@qwestoffice.net>, "Mike Britton" <mbritton@northunitid.com>, "Mike LaPlant" <[REDACTED]>, "Natasha Montgomery" <nmontgomery@sidwater.org>, "Norm Haak" <[REDACTED]>, "Norm Semanko" <norm@iwua.org>, "North Platte Irrigators" <[REDACTED]>, "Pat Riley" <[REDACTED]>, "Paul Orme" <[REDACTED]>, "Rebecca Davidson" <[rebecca@\[REDACTED\].com](mailto:rebecca@[REDACTED].com)>, "Richard Moss" <RMoss@ppeng.com>, "Sheldon Jones" <sheldon@farmfoundation.org>, "Steve Benson" <swbenson@iid.com>, "Tom Davis" <tdavis@ycwua.org>, "Tom Knutson" <[REDACTED]>, "Tom Myrum" <tmyrum@wswra.org>, "Wade Noble" <[REDACTED]>
Cc: "Gary Sawyers" <gws@bolenfransen.com>, "Mark Limbaugh" <mlimbaugh@tfgnet.com>
Subject: July 2015 Executive Director's Report

Dear Alliance Directors and Advisory Committee Members:

Attached, please find the July 2015 Executive Director's Report (EDR), which is intended to keep you apprised as to what is happening behind the scenes on policy issues the Alliance is engaged in, some of which we will discuss on our next joint teleconference of the Board of Directors and Advisory

Committee, scheduled for this **Friday, July 10, 2015, at noon (Pacific, including Arizona) 1:00 p.m. (Mountain); 2:00 p.m. (Central), 3:00 p.m. (Eastern)**. This report is intended for your use, but I understand that you may wish to share this information with your local board members and close associates. I would ask that you be circumspect when you distribute this, however.

In the past month, Alliance efforts have focused on influencing Western water legislation and the new Clean Water Act rule, addressing California drought public education challenges, completing important policy reports, and representing the Alliance in public forums. These issues and others are discussed in this EDR.

I will send out an agenda and call-in information later this week.

Please do not hesitate to contact me if you have any questions about the EDR.

Best regards –

Dan Keppen
Executive Director



MEMORANDUM

TO: BOARD OF DIRECTORS AND ADVISORY COMMITTEE
FROM: DAN KEPPEL, EXECUTIVE DIRECTOR
SUBJECT: EXECUTIVE DIRECTOR'S REPORT
DATE: JULY 6, 2015
CC: MARK LIMBAUGH, GARY SAWYERS

This executive director's report (EDR) is intended to keep you apprised as to what is happening behind the scenes on policy issues the Alliance is engaged in, some of which we will discuss on our next joint teleconference of the Board of Directors and Advisory Committee, scheduled for next **Friday, July 10, 2015, at noon (Pacific, including Arizona) 1:00 p.m. (Mountain); 2:00 p.m. (Central), 3:00 p.m. (Eastern)**. This report is intended for your use, but I understand that you may wish to share this information with your local board members and close associates. I would ask that you be circumspect when you distribute this, however.

In the past month, Alliance efforts have focused on influencing Western water legislation and the new Clean Water Act rule, addressing California drought public education challenges, completing important policy reports, and representing the Alliance in public forums. These issues and others are discussed in this EDR.

ADMINISTRATION ACTIONS

1. U.S. Department of Interior: Agency-Specific Procedures for PR&G

The Family Farm Alliance and seven other national and regional water and power organizations in May submitted a letter to the U.S. Department of the Interior and Bureau of Reclamation that outlines concerns with proposed procedures that could have a critical bearing on how new water resource development projects and programs are evaluated in the future. The Interior Department has developed Agency-Specific Procedures (ASP) that will implement Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies (PR&G). Development of the PR&G was authorized by the 2007 Water Resources Development Act

(WRDA), passed by Congress and signed into law. The PR&G govern how Federal agencies evaluate proposed water resource development projects and programs. Many of us in the water user community believe these procedures – if not properly prepared - may increase delays and offer more opportunities for water project critics to put up more road blocks. While we may not disagree with some of the provisions in the draft ASP, we remain concerned that, overall, the draft ASP and PR&Gs could significantly impede water management and development activities in the Western United States by adding significant bureaucratic layers onto already complex federal environmental and engineering decision making processes.

Our 9-page letter details concerns with the subjective nature of the proposal and explains why the draft document is biased towards nonstructural and demand management strategies and could render future federal water infrastructure investments hopelessly bound in red tape and indecision. The joint review of the draft ASP raises questions that require answers and identified issues that need to be further vetted. Mark Limbaugh and I will be meeting with Deputy Assistant Interior Secretary for Water and Science Tom Iseman and other Interior and Reclamation officials in Washington, D.C. next week to discuss final changes to their PR&G agency specific guidance based on our comments.

2. Department of Interior: Aging Infrastructure Initiative

I was contacted last month by Matt Maucieri (Congressional Affairs Director at the Department of Interior) who outlined Interior and Reclamation's plans to kick-start an effort intended to catalogue the state of Western water infrastructure. They are looking for "high level" input from groups like the Alliance, Western States Water Council, NWRA and regional power organizations to discuss this proposed process. Mark Limbaugh and I will be meeting with Matt next week to discuss Interior's idea of setting up an Infrastructure Financing Center in the Secretary's office at Interior for coordinating tools used in financing new water infrastructure.

3. Department of Interior, Bureau of Reclamation: River Basin Study Update

Bureau of Reclamation Commissioner Estevan López announced earlier this month that Reclamation will use \$1.5 million to partner with water managers in Arizona, California and New Mexico to conduct comprehensive water studies. This funding will help complete two basin studies and develop plans of study for two more. Reclamation selected the Salinas and Carmel River Basins (CALIFORNIA) and Lower Santa Cruz River Basin (ARIZONA) as subjects for basin studies. A basin study is a comprehensive study that defines options for meeting future water demands in river basins in the western United States where imbalances in water supply and demand exist or are projected to exist in the future. Two basins were also selected to develop a plan of study. A plan of study helps a cost-share partner - such as a local water district - define the outcomes and set the scope and focus for a potential future basin study. Reclamation will develop the plans of study with each cost-share partner. The two plans of study are the Middle Rio Grande and Mojave River Basins.

The Basin Study Program is part of the WaterSMART Program, which is Interior's sustainable water initiative that uses the best available science to improve water conservation and help water resource managers identify strategies to narrow the gap between supply and demand. To learn more about the Basin Study Program or the projects discussed above, please visit www.usbr.gov/WaterSMART/bsp.

4. U.S. Department of Agriculture (USDA)

a. Proposed Groundwater Management Initiative

The U.S. Forest Service last month announced full withdrawal of its Proposed Directive on Groundwater Management. The directive, which was proposed in May of 2014, was finally withdrawn after a bipartisan effort to stop the directive and protect the longstanding and effective state management of these waters. The agency's groundwater directive, unveiled in May 2014, was widely criticized by Republicans and Western governors who argued it could usurp states' authority to allocate water. As you know, the Family Farm Alliance in 2014 was actively engaged on this matter, and worked with Western Governors Association, National Water Resources Association, and others in the regulated community to express concerns on possible infringement by the proposed directive with state water law. The Alliance's detailed comment letter on this matter was distributed at a related oversight hearing conducted last summer by the House Water and Power Subcommittee. The Forest Service's notice of withdrawal<<https://www.federalregister.gov/articles/2015/06/19/2015-15151/proposed-directive-on-groundwater-resource-management-forest-service-manual-2560>> in the Federal Register acknowledges those concerns but calls them unfounded. While the proposal was received favorably by tribes and conservation groups, the agency said it "must have further discussions" with other stakeholders before moving forward with the proposal. This is a rare and nice victory to celebrate in otherwise grim times.

b. DamWatch

USDA is unveiling DamWatch, a new web-based application that provides real-time monitoring of rainfall, snowmelt, stream flow and seismic events that could pose potential threats to dam safety. By monitoring these structures, USDA local project sponsors can better prevent and protect against hazardous, costly and potentially catastrophic events. Click here to [Learn more about DamWatch](#).

c. Department Policy for Climate Change Adaptation

USDA last month announced additional steps it is taking to integrate climate change adaptation into its programs and operations. Under the updated USDA Policy Statement on Climate Change Adaptation (Departmental Regulation 1070-001), the agency recognizes that climate stressors have consequences for food production, yields of staple crops, forests and grasslands, and these,

in turn, affect the economic well-being of individuals. Under the changes announced, USDA will:

- Integrate climate change adaptation planning, implementing actions, and performance metrics into USDA programs, policies and operations to minimize climate risks and exploit new opportunities that climate change may bring;
- Analyze how climate change is likely to affect its ability to achieve its mission, operations and policy and program objectives;
- Identify appropriate key performance measures to evaluate progress in climate change adaptation;
- Participate in adaptation implementation as part of a broader commitment to developing the next generation of regional climate solutions through USDA Regional Hubs for Risk Adaptation and Mitigation to Climate Change;
- Incorporate climate-resilient decision-making into international development programs and investments of relevant USDA agencies; and
- Develop and maintain an adaptation plan for managing the challenges and consider potential climate change impacts when undertaking long-term exercise, setting priorities for scientific research and developing performance measures.

According to USDA, Regulation 1070-001 is consistent with the 2014-2018 USDA Strategic Plan and with guidance from the Council on Environmental Quality and the Federal Council on Climate Change Preparedness and Resilience. The regulation can be found at: www.usda.gov/oce/climate_change/adaptation.htm.

5. Department of Commerce: NMFS Voluntary Drought Initiative

The National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW) created a unique incentive program during the 2014 drought, and NMFS officials have encouraged the Family Farm Alliance to review and gauge interest in further expansion of this program. The California Voluntary Drought Initiative enabled NMFS and CDFW to enter into individual agreements with landowners who were willing to take specific actions to help conserve listed salmon during a drought year and provided these landowners with improved regulatory certainty under the federal and state Endangered Species Acts. The Initiative and individual agreements can be found on the NMFS West Coast Region website: http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/voluntary_drought_initiative.html. Please let me know if you have any questions or if you would like to discuss this program directly with Irma Lagomarsino, the newly appointed Branch Chief for Partnerships, Communications and External Affairs in the Portland (OREGON) Regional Administrator's Office.

6. EPA: Clean Water Act "Waters of the U.S." (WOTUS) Rulemaking

One month after the Obama Administration released its controversial final rule on what

constitutes a “water of the U.S.” jurisdictional under the Clean Water Act (CWA), spokespersons for the Environmental Protection Agency (EPA) and the American Farm Bureau Federation (AFBF) are waging a public relations battle over the extent to which agricultural operations will be impacted by the new rule. Not all environmental groups are pleased, either, and claim the rule reduces the agencies’ jurisdiction to protect waters that have been covered under the CWA since the 1970s. The Obama administration’s final Waters of the U.S. (WOTUS) was published in the Federal Register on June 29, which triggers opportunities for lawsuits challenging the rule and for potential legislative intervention under the Congressional Review Act.

Legal challenges from states, industry groups, and some environmental groups have already been initiated. The Center for Biological Diversity claims the final rule “contains some very serious negative provisions including not protecting streams and rivers that have historically been protected under the CWA, exempting industrial-scale livestock facilities, and allowing streams and rivers to be impounded or filled with toxic coal ash and other waste”. Many in the regulated community and Congressional Republicans are also not happy, but not for the same reasons. Criticisms continue regarding the manner in which the rule applies to agriculture, the perceived top-heavy approach taken by the Administration in the rule-making process, and allegations surrounding what some say was the questionable public relations campaign the Obama Administration used to push this rule forward. As previously reported, several bills and riders have been proposed in Congress to limit agency implementation of the rule.

A total of 27 states are challenging the Obama Administration in court over the final rule. The lawsuit argues that the WOTUS rule violates the CWA, the Constitution and the Administrative Procedures Act (APA), the law that governs the federal rulemaking process. The CWA allows challenges to be filed in federal district courts across the country, and these suits have been filed in targeted jurisdictions that may be more sympathetic to the states’ cause. So far, challenges have been filed in the Southern District of Georgia, the District of North Dakota, the Southern District of Ohio, the Southern District of Texas and the 5th U.S. Circuit Court of Appeals (a dual filing). The cases may be consolidated at some point, as well.

a. Family Farm Alliance Assessment of WOTUS Rule

Our Washington, D.C. representative – The Ferguson Group (TFG) - has prepared a detailed memo that assesses the final rule, which includes traditional navigable waters, interstate waters, territorial seas, and impoundments of jurisdictional waters in the definition of “waters of the United States.” These waters are jurisdictional by rule under the CWA.

i. Tributaries

In departing from the existing regulations, the final rule makes all tributaries to a “water of the U.S.” automatically jurisdictional as a “water of the U.S.” under the CWA. The final rule defines a “tributary” as a water feature with a “bed, banks and an ordinary high water mark” that contributes flow either directly or indirectly through another water body (either jurisdictional or

non-jurisdictional) to a “water of the U.S.” Tributaries can include perennial, intermittent, and ephemeral (i.e. seasonal rainfall or snowmelt induced) streams. A tributary can be natural, man-altered, or man-made waters and includes waters such as rivers, streams, canals, and ditches not specifically excluded under the final rule. Also, under the final rule wetlands and open waters without bed, banks and ordinary high water marks are not tributaries and will be evaluated for adjacency in determining whether they are a “water of the U.S.” The tributary definition, however, does require that flow in tributaries must be of “sufficient volume, frequency, and duration to create the physical characteristics of bed and banks and an ordinary high water mark.” If a water lacks sufficient flow to create such characteristics, it will not be considered a “tributary” under the final rule. The final rule suggests that a feature that flows very rarely is not a tributary because it would not form the physical indicators required under the definition. The Alliance agrees with concerns made by AFBF and others that the tributary rules are expansive and could lead to uncertainty, particularly in areas where Western farmers and ranchers store, move and apply water for irrigation of crops.

ii. “Adjacent” waters

Under existing regulations, waters considered “adjacent” to jurisdictional waters -- traditional navigable waters, interstate waters, the territorial seas, impoundments or tributaries, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters -- are considered “waters of the U.S.” However, the final rule changes that to include waters adjacent to jurisdictional waters within a minimum of 100-feet and within the 100-year floodplain, and out to a maximum of 1,500-feet from the ordinary high water mark (high tide line) of such jurisdictional waters. These “adjacent” waters are automatically considered “waters of the U.S.” by rule.

iii. “Other” Waters

Existing regulations include isolated or “other” waters as “waters of the U.S.” if the use, degradation or destruction of which could affect interstate or foreign commerce. But the final rule sets forth only two sets of isolated or “other” waters that could trigger a case-specific “significant nexus” analysis under the CWA to determine if they are “waters of the U.S.” subject to federal regulation. The term “significant nexus” is defined in the final rule as “a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a “water of the U.S.” First, if specific waters are similarly situated as prairie potholes, Carolina & Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands and are determined to have a significant nexus to “waters of the U.S.” then they, too, are considered jurisdictional. Second, isolated and “other” waters within the 100-year floodplain of traditionally navigable water, interstate water, or a territorial sea, and all waters within 4,000-feet of any jurisdictional water, and determined through a case-specific analysis to have a significant nexus to such jurisdictional waters, then they, too, will be considered jurisdictional as “waters of the U.S.” Isolated or “other” waters that do not meet these two tests cannot be considered as “waters of the U.S.” and are excluded from CWA regulation.

iv. Exclusions

Waters that are excluded under existing regulations are limited to prior converted cropland and wastewater treatment facilities. The final rule expands those exclusions to include ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary; ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain a wetland; and, ditches that do not flow directly or indirectly through another water into a traditionally navigable water, an interstate water, or a territorial sea. Also excluded in the final rule are artificially irrigated areas that revert to dry land if irrigation water ceases to be applied; artificial, constructed lakes and ponds created in dry land (e.g. farm and stock water ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds); artificial reflecting pools or swimming pools created in dry land; small ornamental waters created in dry land; water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for fill, sand or gravel; erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of a tributary, non-wetland swales, and lawfully constructed grassed waterways; and puddles.

Finally, the rule excludes groundwater, including groundwater drained through subsurface drainage systems; stormwater control features constructed in dry land to convey, treat or store stormwater; and wastewater recycling structures constructed in dry land, detention and retention basins built for wastewater recycling, groundwater recharge basins, percolation ponds used in wastewater recycling, and water distribution systems used to recycle water.

v. Irrigation ditches and drains

Recall that Mark Limbaugh and I participated in a meeting with senior policy officials at EPA and the Corps of Engineers in Washington, D.C. on June 11 to discuss the final CWA rule for WOTUS. The Alliance has worked closely with these parties in the past two years, and after reviewing the final rule, it was our take that the final rule will not likely change how irrigation ditches, canals and drainage ditches in the West are treated under the current regulations. The EPA and Corps officials we met with confirmed this. Because most of these channels convey “intermittent” flows, they would be considered “non-jurisdictional” under the CWA. For those facilities that flow water year-round (such as in some areas of the Southwest), the existing Regulatory Guidance Letter (RGL) that EPA and the Corps of Engineers issued in July 2007 would apply. RGL 07-02 provides a national approach for conducting exemption determinations for the construction and maintenance of irrigation ditches and the maintenance of drainage ditches consistent with Section 404(f) of the CWA. Section 404(f) specifically exempts from CWA permitting requirements discharges of dredged or fill material into “waters of the U.S.” associated with the construction and maintenance of irrigation ditches and maintenance of drainage ditches. The EPA and the Corps have used this RGL to interpret these CWA exemptions in many cases in the West.

This is a huge win for our members, and is due in large part to our constructive relationship with the agencies on this issue, and because of Mark Limbaugh's involvement with crafting the original RGL and the relationships he has with senior policy officials at EPA and the Corps.

Corps and EPA officials suggested that we transmit a letter explaining the importance of the RGL to them, which will greatly assist in ensuring that this RGL remains in force after the final rule is put into effect. That letter was prepared and was transmitted to EPA and the Corps last week, which I shared with you. I strongly encouraged you to use the letter as a basis to create a similar letter coming from you or your organization, and send it to EPA. Our goal is to give EPA and the Corps cover on this; the more letters they receive, the better.

ACTIVITY IN CONGRESS

Mark Limbaugh of TFG reports that the House and Senate are in session this week. The House will complete consideration of the \$30.17 billion FY 2016 Interior-Environment Appropriations bill ([H.R. 2822](#)), which the White House has already threatened to veto. The House will also vote on the "Resilient Federal Forests Act of 2015" ([H.R. 2647](#)), a comprehensive bill aimed at expediting and improving forest management activities in federal forests. The full House Appropriations Committee is scheduled Wednesday to markup the \$20.65 billion FY 2016 Agriculture-FDA spending [bill](#). The full Committee will also vote on revising the 302(b) allocations that limit how much spending can go into each of the 12 appropriations bills. Additionally, this week the House Appropriations Subcommittee on Homeland Security will markup the FY 2016 Homeland Security spending bill while the Senate Appropriations Committee will markup the FY 2016 State-Foreign Operations spending bill.

Looming over these numerous policy debates is the larger dispute over the budget. Republican leadership remains committed to moving appropriations bills through Congress that largely adhere to sequester-level spending limits. Democrats have promised to block any such spending bills and instead want a deal that raises the caps for non-defense and defense discretionary spending. With Democrats standing in the way of the normal appropriations bills, some experts predict Congress will be forced to pass a continuing resolution (CR) to keep the government funded past September 30. Congress is scheduled to break for the month-long recess in August, giving lawmakers a few weeks in July and September to resolve the funding impasse in advance of September 30, the end of the current fiscal year.

7. House of Representatives July Agenda

According to the House Majority Leader's office, the House this month will consider legislation dealing with an energy package, drought in the West, logging and other regulatory reforms, and FY2016 appropriations for several federal agencies before heading home for the August recess. This week the House is expected to resume debate on the \$30 billion Interior, Environment and Related Agencies appropriations bill, with several controversial amendments still up for consideration. Besides a broad energy package of bills being considered in the

Energy and Commerce Committee, the House will also vote on the major regulatory overhaul bill ([H.R. 427](#)) known as the “REINS Act” sponsored by Rep. Todd Young (R-IN), which would require congressional approval for regulations with an estimated impact of more than \$100 million. The House will also consider a west-wide drought bill (see below) introduced by Rep. David Valadao (R-CALIFORNIA) that would, among other things, accelerate water transfers to farms in the Central Valley and cities in Southern California by tweaking flow requirements used to protect endangered fish species located in California’s Sacramento-San Joaquin River Delta. The bill would also focus on streamlining permitting processes for new water storage facilities.

The House is also set to vote on a bill ([H.R. 2647](#)) that would expedite logging sales on federal lands. The “Resilient Federal Forests Act of 2015” is sponsored by Rep. Bruce Westerman (R-AR) and would streamline National Environmental Policy Act (NEPA) reviews for logging projects that reduce wildfire risks (including the use of broader categorical exclusions under the law), boost forest resilience to insects and disease, and protect water supplies. The bill passed the House Agriculture Committee last month and will be considered in the Natural Resources Committee this week as part of a package that would establish criteria for making catastrophic wildfires on public lands become eligible for emergency declarations. As you know, in most Western states, much of the available water derives from snowmelt in mountainous areas. A July 2008 report released by the National Research Council underscores the importance of forests to the nation’s water supplies. The Alliance formally supported H.R. 2647 last month.

8. Senate ENR Committee Hearing on Yakima Bill

On Tuesday, the Senate Energy and Natural Resources (ENR) Committee will hear testimony on [S. 1694](#), the “Yakima River Basin Water Enhancement Project Phase III Act of 2015,” introduced by Washington State Democrat Sens. Maria Cantwell and Patty Murray. The bill would authorize a decade worth of projects that are components of the Yakima River Basin Integrated Plan, a 30-year watershed-wide plan to protect agriculture, cities, fish and wildlife and other natural and cultural resources from water shortages in the Yakima River Basin in Washington State. The legislation contemplates federal partnerships with the State of Washington, local governments and non-governmental organizations, and includes some innovative water infrastructure authorizing language that would allow participating irrigation entities in the Basin to finance, construct, own and maintain drought emergency water delivery facilities on the federally-owned Bureau of Reclamation’s Yakima Project lands at no cost to the Treasury.

9. Western Drought Legislation

a. House of Representatives Bill

With water supply conditions worsening in California and across much of the Western U.S., a group of House Republicans late last month introduced new legislation to address the drought in

California and other parts of the West. [H.R. 2898](#), the "Western Water and American Food Security Act," would, among other things, help expedite California's Central Valley water transfers, adjust water flow requirements protecting endangered fish species in the Sacramento-San Joaquin River Delta in central California, deauthorize a legal settlement on California's San Joaquin River, accelerate and streamline the review and permitting process for water storage projects in California and across the West, and allow irrigators in some water districts to prepay the long-term debts owed to the Bureau of Reclamation. The House is expected to consider H.R. 2898 this month.

The bill has drawn nearly two dozen sponsors, including Rep. Jim Costa (D-CALIFORNIA) and Majority Leader Kevin McCarthy (R-CALIFORNIA), and is supported by several San Joaquin Valley water interests, including Westlands Water District, San Luis & Delta-Mendota Water Authority, Friant Water Authority, Kern County Water Agency, South Valley Water Association, and San Joaquin River Exchange Contractors. At a time when Western rural economies are feeling threatened by federal agency water rights policies and a slew of recent rulemaking, Republicans from other Western states also praised the House bill. Other Central Valley California Democrats oppose such legislation and plan to introduce their own version of a drought measure soon. Rep. Jared Huffman has invited every Californian to provide ideas and comments on an ambitious new water bill he has drafted, soliciting comments from the public and interested parties.

b. Senate Consideration of Drought Legislation

On the Senate side, Sen. Dianne Feinstein (D-CALIFORNIA) plans to introduce her drought bill sometime this month, and Senate Energy and Natural Resource Chairwoman Lisa Murkowski has committed to crafting a west-wide drought bill during this Congress. Indications are that Sen. Feinstein's bill will be address not just emergency operational changes but also at longer-term approaches like desalination and more water storage.

California farmer Cannon Michael last month represented the Family Farm Alliance as the sole agricultural witness at a Senate oversight hearing on the western drought. Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski (R-AK) at the hearing vowed that any legislation dealing with the drought would consider solutions that could help with west-wide conditions, even though California has been hit the hardest as of lately. With 57% of the West currently experiencing drought, the Chairwoman made it clear that dry conditions were not limited to California. The Senate hearing addressed several themes on conflicts over water during drought, especially in California due to the struggle between the water needs of endangered fish and the farming community in the agricultural Central Valley of the State. Other topics discussed included whether current approaches to drought are sustainable in the face of multi-year droughts; what is the appropriate role for the federal government; are there new approaches to storage, conservation and efficiency that should be considered; and whether new technologies are fast becoming more cost effective in managing water under dry conditions, creating new supplies through desalination, reuse and recycling, and predicting the impact of

climate variability and change on future drought cycles. Chairwoman Murkowski concluded the hearing by stating that the West may be experiencing a “new normal” in current drought conditions and that we should be preparing for that reality.

c. Alliance Actions on Capitol Hill

Cannon Michael sought to illustrate the problems Western farmers and ranchers face due to the current drought, outline what producers like him and other Westerners are doing to address these challenges, and provide policy recommendations that the Family Farm Alliance believes lay the foundation for effectively addressing current and future drought challenges in the Western United States. His appearance before the Senate committee marked the 46th time in the past decade that Family Farm Alliance representatives have been invited to testify before Congress. PDF versions of the Alliance written testimony and responses to 15 “Questions for the Record” posed by Senate Energy and Natural Resource Committee Chair Lisa Murkowski and Senator Debbie Stabenow after the June 2nd oversight hearing can be downloaded at www.familyfarmalliance.org. These are both detailed documents, but they provide us a great opportunity to further elaborate on topics that could not be expanded upon at the hearing. I encourage you to review this and share these documents, since they touch on many of the issues and projects that are Alliance priorities right now.

10. House Water and Power Subcommittee Hearing on Water Legislation

The House Natural Resource Subcommittee on Water, Power and Oceans held a hearing last month on several bills to increase water supplies in parts of the West and to deal with the Bureau of Reclamation’s aging federally owned water infrastructure. [H.R. 1107](#) (Rep. Paul Gosar, R-ARIZONA) garnered bipartisan support, and would mandate the creation of an asset condition inventory and the publishing of reports on the maintenance needs at Bureau of Reclamation facilities, including the agency's hundreds of Western dams. The bill is the companion measure to Sen. John Barrasso’s (R-WYOMING) [S. 593](#) introduced in the Senate. [H.R. 2749](#) (Rep. David Valadao, R-CALIFORNIA) would allow the Bureau of Reclamation to consider additional maintenance and expanding benefits for dams that are undergoing agency safety modifications and repairs under its Safety of Dams Program. [H.R. 2273](#) (Rep. Cynthia Lummis, R- WYOMING) would amend the Colorado River Storage Project Act (CRSP) to expand the usable capacity of Wyoming's Fontenelle Reservoir by 80,000 acre-feet. And, [H.R. 1406](#) (Rep. Ben Ray Luján, D-NEW MEXICO) would make minor corrections to the water rights settlement between the State of New Mexico and the Navajo Nation.

Both H.R. 1107 and H.R. 2749 are being closely monitored by the Family Farm Alliance. Tom Davis – a member of the Family Farm Alliance Advisory Committee – testified in support of H.R. 1107 on behalf of the Yuma County (ARIZONA) Water Users Association. Jon Rubin, representing the San Luis & Delta-Mendota Water Authority, testified in support of H.R. 2749, which could provide a tool to expand the storage capacity of California’s San Luis Reservoir. While the Family Farm Alliance supports the general intent of both bills, they are being

examined to ensure that unintended consequences are not generated should they become law (see below).

a. Concerns with H.R. 1107 and H.R. 2749

Several of our members have expressed concern about the proposal in H.R. 1107 for reporting requirements and future implications associated with transferred works. Some of our members believe that transferred works should not be subjected to the reporting requirements of this bill, as the local non-federal entities are 100% responsible for maintaining and replacing these facilities at their expense. Also, the bill would require completion of a report that would describe the efforts of Reclamation to manage all its facilities, standardize and streamline data reporting and processes across regions, and expand on the information otherwise provided in Asset Management Reports. Unfortunately, this provision would cause significant increased liability for nonfederal water contractors and could place Reclamation in a position of having to limit or cease water delivery operations of a federally owned facility if such ratings were applied and the maintenance/rehabilitation activity was delayed or not implemented at all due to lack of resources. As you know, a large portion of the costs of maintaining, replacing, and rehabilitating these federal water facilities (reserved works) falls on the non-federal project water and power contractors, and as such, publicly portraying these facilities as somehow not current on maintenance or replacement could actually accelerate the work on these projects to a point that may not be currently affordable to the non-federal entities on the hook for paying, in advance, these costs. The lack of any federal financing tools is a key contributor to this inability to afford such projects on an accelerated basis.

We believe that a better approach would be for Congress to require that Reclamation work collaboratively and transparently with their project water and power contractors to establish planned maintenance, replacement and rehabilitation work over a ten or fifteen year framework that could be reported to Congress on a regular basis. This way, project water and power contractors can plan for long-term financing for their share of the costs of the work to be performed in a much more business-like and organized manner.

H.R. 2749 would amend the Safety of Dams Act, a federal law of great importance to Family Farm Alliance members. The full text of the bill can be found [here](#). We have already heard concerns about H.R. 2749, primarily associated with the vague nature of the bill, which could have some unintended negative consequences. Key concerns are primarily centered on the Secretary's discretion and lack of definition regarding "additional project benefits" and how that might be implemented by future Administrations. Given the ESA issues many of our members are facing, the fear is that the storage (new, expanded, or potentially reallocated) would be used for environmental benefits, such as fish flows, ecosystem functions, tribal rights, water quality, etc., and that the costs would be borne by the operator.

Mark Limbaugh and I set up a conference call with committee and bill sponsor staff before the hearing to discuss our concerns on these bills. Staff were receptive to our concerns and

constructive, and we will continue to work with them in order to better improve what are well-intended, good conceptual ideas. I urge that you review these bills and please share any concerns or positive observations that you may have.

11. Senate Energy and Natural Resources Water and Power Subcommittee Hearing

Last month, I sent to you for your review and use a brief summary prepared by TFG staff on the June 18, 2015 Senate Energy and Natural Resource Water and Power Subcommittee hearing on several water bills. Of interest, S. 593, the companion bill to H.R. 1107 (see above) was heard, as well as [S. 982](#), the "Water Rights Protection Act", and S. 1533, the "Water Supply Permitting Coordination Act".

S. 982 prohibits the Secretary of the Interior and the Secretary of Agriculture from: (1) conditioning the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer or relinquishment of any water right directly to the United States, in whole or in part, granted under state law, by federal or state adjudication, decree, or other judgment, or pursuant to any interstate water compact and such Secretaries; and (2) requiring any water user to apply for a water right in the name of the United States under state law as a condition of such a land use or occupancy agreement. S. 1533 establishes the Bureau of Reclamation as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under federal law to construct new surface water storage projects on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding (qualifying projects). The Alliance is on record for supporting S. 982 and S. 1533. The subcommittee also considered [S. 1305](#), a bill to amend the Colorado River Storage Act to authorize the use of the active capacity of the Fontenelle Reservoir (WYOMING).

ALLIANCE INITIATIVES AND ACTIONS

12. California AB 1201 – Predation of Listed Fish Species by Non-Native Species

Per the direction of the Board, the Alliance in June formally supported AB 1201, a California state bill that directs the Department of Fish and Wildlife to develop a science-based approach that helps address predation of listed species by non-native species in the Sacramento-San Joaquin Delta. Among the "stressors" in the Delta environment are non-native fish species that prey on endangered species such as Delta smelt and Chinook salmon. It is also estimated that there are nearly one million striped bass in the Delta and the watershed, and the catch of large-mouth bass has quadrupled since the 1980s. Both are non-native fish that prey on young salmon and delta smelt. And yet, there is not even a pilot program in place to begin trying to further understand this critical stressor. The Bay-Delta ecosystem is in severe distress and there is no major stressor facing the Bay-Delta ecosystem that can be ignored. The concept embedded in AB 1201 is an excellent example of the type of ecosystem monitoring that would help lead to better

fisheries and water management decisions. AB 1201 passed the Assembly floor on a 74-1 vote and has been set for a hearing on July 14th in the Senate Natural Resources and Water Committee.

13. California Drought Journal Article

After over a year of writing, peer-review, and re-writing, the article I wrote on behalf of the Family Farm Alliance on the regulatory nature of the California drought was published on Friday. *“The 2014 drought and water management policy impacts on California’s Central Valley food production”* will be included in a special edition of the Journal of Environmental Studies and Sciences (JESS) that deals with food system resiliency and vulnerabilities. The co-author of our paper is Tricia Dutcher, who was actually working on her post-doc dissertation and was asked to review one of my earlier drafts. She ended up working with me to complete the final version in exchange for being listed as a co-author. She was a Godsend; I would not have been able to meet the completion deadline without her expert editing and source-checking. I presented the article last week in San Diego at the Association for Environmental Studies and Sciences annual conference. This was definitely not an opportunity to preach to the choir, but overall, I think it went very well. You can download a PDF version of the published article on our website: www.familyfarmalliance.org.

14. Water Rights

On our last Alliance teleconference call, we discussed the importance for the Alliance to weigh in on the importance of the doctrine of prior appropriative rights. The board agreed that we should develop a policy paper on this matter, hopefully in time for the July 8-10 Western States Water Council meeting. We need to demonstrate the importance of the existing system, show that it actually works, and try to rebut growing arguments by some of our critics that the system should be scrapped and replaced with something like the “Australia model”, which has been a failure. I’ve spent time in recent weeks outreaching to attorneys and water professionals like yourselves to provide me with key bullet points or existing policies, papers, etc. that they think may help support this effort. My goal is to collect this type of information from our allies around the West, and then sit down and start crafting a policy paper that will hopefully prove to be a useful educational tool. I have a draft version of this paper that I’m currently circulating to Western water attorneys and engineers; once I hear back from them, I’ll circulate a revised version for you to review.

15. Colorado River Basin White Paper

On last month’s joint teleconference call of the board and Advisory Committee, we discussed the draft white paper that a small group of us has been working on for the past year, per the direction of the Family Farm Alliance board of directors. An earlier draft of this letter was shared with our Colorado River Basin directors and Advisory Committee members. Overall, support was expressed for the report, and the Board approved finalizing the report. After our call, I received

some additional suggestions intended to improve the final version, and after sharing those suggestions with those parties most interested, we are very near to releasing the final version for public distribution.

16. 2016 Family Farm Alliance Annual Meeting and Conference

The Family Farm Alliance recently entered into a contract with the Monte Carlo Resort and Casino, which will once again host the Alliance's annual meeting and conference in Las Vegas. Mark your calendars: the general session of the 2016 Family Farm Alliance Annual Conference is set for February 18-19. In 2016, the Monte Carlo room rates will actually be \$9 lower than in 2015.

17. White House Drought Symposium

I have been invited to attend the White House Drought Symposium on July 15 in Washington, D.C. There are five slots for agriculture, and I have been asked to represent the Alliance and provide the perspective of Western irrigated agriculture. Organized through the National Drought Resilience Partnership (NDRP), the symposium will bring together a small group of high-level experts on water and drought issues at all levels of government, academia, the agricultural sector, conservation organizations, and the private sector. Participants will explore opportunities to improve long term sustainability of water resources – and drought resilience specifically -- through improved coordination, collaboration, and management both within the federal government and with public and private stakeholders. Following the Symposium, NDRP and stakeholders will continue the exchange of ideas about helpful federal actions for drought resilience through social media, regular in person or virtual meetings, or online resource development. The NDRP will also produce a summary of the Symposium, including listing the barriers to and opportunities for federal action so identified by symposium participants, distinguishing between opportunities that exist strictly within the federal government and those that require partnership with non-federal stakeholders. I am working with the Interior Department and Mark Limbaugh to prepare for this meeting, and to set up additional meetings with Interior, EPA, and Congressional staff while I'm back in D.C.

18. North American Climate Smart Agriculture Alliance

Earlier this year, I was appointed to the Steering Committee of the North American Climate Smart Agriculture Alliance (NACSAA). Last week, the Steering Committee conducted its inaugural meeting at the American Farm Bureau Federation's headquarters in Washington, D.C. I was not able to attend in person, but participated by phone. The Steering Committee is comprised of representatives from some impressive agricultural and environmental organizations from Canada, the U.S. and Mexico. Last week's meeting focused on trying to forge consensus on the building blocks for an initial work plan, develop metrics for assessing progress, and identifying other actions that can be taken to ensure the effective functioning of the coalition. We will be working to develop a work plan over the remainder of the year. I believe this coalition

has real value. Having a seat on the Steering Committee will provide an excellent forum to advance the recommendations we developed in our 2007 climate change report.

ADMINISTRATIVE AND MISCELLANEOUS ISSUES

- The Water Education Foundation is planning the program for its 10th biennial, invitation-only Colorado River Symposium that will be Sept. 16-18 in Santa Fe, New Mexico. The biennial event features some of the top policymakers and stakeholders in the Basin as participants and attendees. The theme for this year's event is *Historic Drought 2000 to 2015: A Catalyst for Innovations*. Pat O'Toole will represent the Alliance in a panel discussion on Sept. 17 about the legal barriers to drought response/innovative solutions such as water marketing to meet long-term supply needs in the Colorado River Basin. Former Assistant Secretary Anne suggested that the Foundation invite an Alliance representative to participate.
- As previously reported, we publicly released the 2015 Alliance economic report last month. The *Capital Press* invited me to write a guest column about this important issue.
- Noel Gollehon of USDA and Betsy Cody of the Congressional Research Service are putting together a panel to discuss the new Principles, Requirements, and Guidelines (PR&G) for evaluation of U.S. water resources investments at the American Water Resources Association annual conference, to be held in Denver, Nov. 16-19, 2015. I have been invited to represent traditional federal water project users on a panel to discuss the new Interior Department PR&Gs (see Item 1, above) and will join panelists from Interior, EPA; and a rep from the conservation community. My role would be to give a perspective on how the PR&Gs might affect investment decisions in federal activities that benefit farms and farm operations, as compared with the old Principles and Guidelines (P&Gs). Here's a link to the conference website:<http://awra.org/meetings/Denver2015/index.html>.

I appreciate all of the helpful input I have received from many of you in the past month. Please do not hesitate to contact me if you have any questions about this report.

From: Petersen, Scott
Sent: Tuesday, July 7, 2015 4:54 PM
To: Thomas Birmingham; David Longly Bernhardt; Johnny Amaral
Subject: Fwd: HR 2898 Valadao OPPOSE
Attachments: ATT00001.htm

Sent from my iPhone, with brevity...

Begin forwarded message:

From: "Steve Evans" <SEvans@friendsoftheriver.org>
To: "Petersen, Scott" <Scott.Petersen@mail.house.gov>
Subject: HR 2898 Valadao OPPOSE

Hi Scott:

Attached is a letter opposing the Valadao bill signed by more than 40 conservation and recreation organizations and businesses, as well as two Native American tribes.

Please contact me if you have any questions.

Thanks.

Steve Evans

From: Bernhardt, David L.
Sent: Wednesday, July 8, 2015 7:58 AM
To: Thomas W. Birmingham (tbirmingham@westlandswater.org)
Subject: PDF OF House Bill
Attachments: BILLS-114hr2898ihDLB.pdf

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114TH CONGRESS
1ST SESSION

H. R. 2898

To provide drought relief in the State of California, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2015

Mr. VALADAO (for himself, Mr. MCCARTHY, Mr. CALVERT, Mr. NUNES, Mr. LAMALFA, Mr. DENHAM, Mr. MCCLINTOCK, Mr. JOYCE, Mr. DIAZ-BALART, Mr. STEWART, Mr. SIMPSON, Mr. KNIGHT, Mr. COOK, Mr. RODNEY DAVIS of Illinois, Mrs. MIMI WALTERS of California, Mr. ROHR-ABACHER, Mr. HUNTER, Mr. ROYCE, Mr. ISSA, Mr. ZINKE, Mr. COSTA, Mr. AMODEI, Mr. HARDY, Mr. TIPTON, Mr. NEWHOUSE, and Mrs. LUM-MIS) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide drought relief in the State of California, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Western Water and American Food Security Act of
6 2015”.

- 1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Definitions.

TITLE I—ADJUSTING DELTA SMELT MANAGEMENT BASED ON INCREASED REAL-TIME MONITORING AND UPDATED SCIENCE

Sec. 101. Definitions.
 Sec. 102. Revise incidental take level calculation for delta smelt to reflect new science.
 Sec. 103. Factoring increased real-time monitoring and updated science into Delta smelt management.

TITLE II—ENSURING SALMONID MANAGEMENT IS RESPONSIVE TO NEW SCIENCE

Sec. 201. Definitions.
 Sec. 202. Process for ensuring salmonid management is responsive to new science.
 Sec. 203. Non-Federal program to protect native anadromous fish in the Stanislaus River.

TITLE III—OPERATIONAL FLEXIBILITY AND DROUGHT RELIEF

Sec. 301. Definitions.
 Sec. 302. Operational flexibility in times of drought.
 Sec. 303. Operation of cross-channel gates.
 Sec. 304. Flexibility for export/inflow ratio.
 Sec. 305. Emergency environmental reviews.
 Sec. 306. Increased flexibility for regular project operations.
 Sec. 307. Temporary operational flexibility for first few storms of the water year.
 Sec. 308. Expediting water transfers.
 Sec. 309. Additional emergency consultation.
 Sec. 310. Additional storage at New Melones.
 Sec. 311. Regarding the operation of Folsom Reservoir.
 Sec. 312. Applicants.
 Sec. 313. San Joaquin River settlement.
 Sec. 314. Program for water rescheduling.

TITLE IV—CALFED STORAGE FEASIBILITY STUDIES

Sec. 401. Studies.
 Sec. 402. Temperance Flat.
 Sec. 403. CALFED storage accountability.
 Sec. 404. Water storage project construction.

TITLE V—WATER RIGHTS PROTECTIONS

Sec. 501. Protection for State Water Project contractors.
 Sec. 502. Area of origin protections.
 Sec. 503. No redirected adverse impacts.
 Sec. 504. Allocations for Sacramento Valley contractors.

Sec. 505. Effect on existing obligations.

TITLE VI—MISCELLANEOUS

- Sec. 601. Authorized service area.
- Sec. 602. Oversight board for Restoration Fund.
- Sec. 603. Water supply accounting.
- Sec. 604. Implementation of water replacement plan.
- Sec. 605. Natural and artificially spawned species.
- Sec. 606. Transfer the New Melones Unit, Central Valley Project to interested providers.
- Sec. 607. Basin studies.
- Sec. 608. Operations of the Trinity River Division.
- Sec. 609. Amendment to purposes.
- Sec. 610. Amendment to definition.

TITLE VII—WATER SUPPLY PERMITTING ACT

- Sec. 701. Short title.
- Sec. 702. Definitions.
- Sec. 703. Establishment of lead agency and cooperating agencies.
- Sec. 704. Bureau responsibilities.
- Sec. 705. Cooperating agency responsibilities.
- Sec. 706. Funding to process permits.

TITLE VIII—BUREAU OF RECLAMATION PROJECT STREAMLINING

- Sec. 801. Short title.
- Sec. 802. Definitions.
- Sec. 803. Acceleration of studies.
- Sec. 804. Expedited completion of reports.
- Sec. 805. Project acceleration.
- Sec. 806. Annual report to Congress.

TITLE IX—ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT

- Sec. 901. Short title.
- Sec. 902. Prepayment of certain repayment contracts between the United States and contractors of federally developed water supplies.

TITLE X—SAFETY OF DAMS

- Sec. 1001. Authorization of additional project benefits.

TITLE XI—WATER RIGHTS PROTECTION

- Sec. 1101. Short title.
- Sec. 1102. Definition of water right.
- Sec. 1103. Treatment of water rights.
- Sec. 1104. Recognition of State authority.
- Sec. 1105. Effect of title.

1 SEC. 2. FINDINGS.

2 Congress finds as follows:

1 (1) As established in the Proclamation of a
2 State of Emergency issued by the Governor of the
3 State on January 17, 2014, the State is experi-
4 encing record dry conditions.

5 (2) Extremely dry conditions have persisted in
6 the State since 2012, and the drought conditions are
7 likely to persist into the future.

8 (3) The water supplies of the State are at
9 record-low levels, as indicated by the fact that all
10 major Central Valley Project reservoir levels were at
11 20–35 percent of capacity as of September 25, 2014.

12 (4) The lack of precipitation has been a signifi-
13 cant contributing factor to the 6,091 fires experi-
14 enced in the State as of September 15, 2014, and
15 which covered nearly 400,000 acres.

16 (5) According to a study released by the Uni-
17 versity of California, Davis in July 2014, the
18 drought has led to the fallowing of 428,000 acres of
19 farmland, loss of \$810 million in crop revenue, loss
20 of \$203 million in dairy and other livestock value,
21 and increased groundwater pumping costs by \$454
22 million. The statewide economic costs are estimated
23 to be \$2.2 billion, with over 17,000 seasonal and
24 part-time agricultural jobs lost.

1 (6) CVPIA Level II water deliveries to refuges
2 have also been reduced by 25 percent in the north
3 of Delta region, and by 35 percent in the south of
4 Delta region.

5 (7) Only one-sixth of the usual acres of rice
6 fields are being flooded this fall, which leads to a
7 significant decline in habitat for migratory birds and
8 an increased risk of disease at the remaining wet-
9 lands due to overcrowding of such birds.

10 (8) The drought of 2013 through 2014 con-
11 stitutes a serious emergency that poses immediate
12 and severe risks to human life and safety and to the
13 environment throughout the State.

14 (9) The serious emergency described in para-
15 graph (4) requires—

16 (A) immediate and credible action that re-
17 spects the complexity of the water system of the
18 State and the importance of the water system
19 to the entire State; and

20 (B) policies that do not pit stakeholders
21 against one another, which history shows only
22 leads to costly litigation that benefits no one
23 and prevents any real solutions.

24 (10) Data on the difference between water de-
25 mand and reliable water supplies for various regions

1 of California south of the Delta, including the San
2 Joaquin Valley, indicate there is a significant annual
3 gap between reliable water supplies to meet agricul-
4 tural, municipal and industrial, groundwater, and
5 refuges water needs within the Delta Division, San
6 Luis Unit and Friant Division of the Central Valley
7 Project and the State Water Project south of the
8 Sacramento-San Joaquin River Delta and the de-
9 mands of those areas. This gap varies depending on
10 the methodology of the analysis performed, but can
11 be represented in the following ways:

12 (A) For Central Valley Project South-of-
13 Delta water service contractors, if it is assumed
14 that a water supply deficit is the difference in
15 the amount of water available for allocation
16 versus the maximum contract quantity, then the
17 water supply deficits that have developed from
18 1992 to 2014 as a result of legislative and reg-
19 ulatory changes besides natural variations in
20 hydrology during this timeframe range between
21 720,000 and 1,100,000 acre-feet.

22 (B) For Central Valley Project and State
23 Water Project water service contractors south
24 of the Delta and north of the Tehachapi moun-
25 tain range, if it is assumed that a water supply

1 deficit is the difference between reliable water
2 supplies, including maximum water contract de-
3 liveries, safe yield of groundwater, safe yield of
4 local and surface supplies and long-term con-
5 tracted water transfers, and water demands, in-
6 cluding water demands from agriculture, munic-
7 ipal and industrial and refuge contractors, then
8 the water supply deficit ranges between ap-
9 proximately 2,500,000 to 2,700,000 acre-feet.

10 (11) Data of pumping activities at the Central
11 Valley Project and State Water Project delta pumps
12 identifies that, on average from Water Year 2009 to
13 Water Year 2014, take of Delta smelt is 80 percent
14 less than allowable take levels under the biological
15 opinion issued December 15, 2008.

16 (12) Data of field sampling activities of the
17 Interagency Ecological Program located in the Sac-
18 ramento-San Joaquin Estuary identifies that, on av-
19 erage from 2005 to 2013, the program “takes”
20 3,500 delta smelt during annual surveys with an au-
21 thorized “take” level of 33,480 delta smelt annu-
22 ally—according to the biological opinion issued De-
23 cember 9, 1997.

24 (13) In 2015, better information exists than
25 was known in 2008 concerning conditions and oper-

1 ations that may or may not lead to high salvage
2 events that jeopardize the fish populations, and what
3 alternative management actions can be taken to
4 avoid jeopardy.

5 (14) Alternative management strategies, remov-
6 ing non-native species, enhancing habitat, moni-
7 toring fish movement and location in real-time, and
8 improving water quality in the Delta can contribute
9 significantly to protecting and recovering these en-
10 endangered fish species, and at potentially lower costs
11 to water supplies.

12 (15) Resolution of fundamental policy questions
13 concerning the extent to which application of the
14 Endangered Species Act of 1973 affects the oper-
15 ation of the Central Valley Project and State Water
16 Project is the responsibility of Congress.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) DELTA.—The term “Delta” means the Sac-
20 ramento-San Joaquin Delta and the Suisun Marsh,
21 as defined in sections 12220 and 29101 of the Cali-
22 fornia Public Resources Code.

23 (2) EXPORT PUMPING RATES.—The term “ex-
24 port pumping rates” means the rates of pumping at

1 the C.W. “Bill” Jones Pumping Plant and the Har-
2vey O. Banks Pumping Plant, in the southern Delta.

3 (3) LISTED FISH SPECIES.—The term “listed
4 fish species” means listed salmonid species and the
5 Delta smelt.

6 (4) LISTED SALMONID SPECIES.—The term
7 “listed salmonid species” means natural origin
8 steelhead, natural origin genetic spring run Chinook,
9 and genetic winter run Chinook salmon including
10 hatchery steelhead or salmon populations within the
11 evolutionary significant unit (ESU) or distinct popu-
12 lation segment (DPS).

13 (5) NEGATIVE IMPACT ON THE LONG-TERM
14 SURVIVAL.—The term “negative impact on the long-
15 term survival” means to reduce appreciably the like-
16 lihood of the survival of a listed species in the wild
17 by reducing the reproduction, numbers, or distribu-
18 tion of that species.

19 (6) OMR.—The term “OMR” means the Old
20 and Middle River in the Delta.

21 (7) OMR FLOW OF 5,000 CUBIC FEET PER
22 SECOND.—The term “OMR flow of 5,000 cubic
23 feet per second” means Old and Middle River flow
24 of negative 5,000 cubic feet per second as described
25 in—

1 (A) the smelt biological opinion; and

2 (B) the salmonid biological opinion.

3 (8) SALMONID BIOLOGICAL OPINION.—The
4 term “salmonid biological opinion” means the bio-
5 logical opinion issued by the National Marine Fish-
6 eries Service on June 4, 2009.

7 (9) SMELT BIOLOGICAL OPINION.—The term
8 “smelt biological opinion” means the biological opin-
9 ion on the Long-Term Operational Criteria and Plan
10 for coordination of the Central Valley Project and
11 State Water Project issued by the United States
12 Fish and Wildlife Service on December 15, 2008.

13 (10) STATE.—The term “State” means the
14 State of California.

15 **TITLE I—ADJUSTING DELTA**
16 **SMELT MANAGEMENT BASED**
17 **ON INCREASED REAL-TIME**
18 **MONITORING AND UPDATED**
19 **SCIENCE**

20 **SEC. 101. DEFINITIONS.**

21 In this title:

22 (1) DIRECTOR.—The term “Director” means
23 the Director of the United States Fish and Wildlife
24 Service.

1 (2) DELTA SMELT.—The term “Delta smelt”
2 means the fish species with the scientific name
3 Hypomesus transpacificus.

4 (3) SECRETARY.—The term “Secretary” means
5 the Secretary of the Interior.

6 (4) COMMISSIONER.—The term “Commis-
7 sioner” means the Commissioner of the Bureau of
8 Reclamation.

9 **SEC. 102. REVISE INCIDENTAL TAKE LEVEL CALCULATION**
10 **FOR DELTA SMELT TO REFLECT NEW**
11 **SCIENCE.**

12 (a) REVIEW AND MODIFICATION.—Not later than
13 October 1, 2016, and at least every five years thereafter,
14 the Director, in cooperation with other Federal, State, and
15 local agencies, shall use the best scientific and commercial
16 data available to complete a review and, modify the meth-
17 od used to calculate the incidental take levels for adult
18 and larval/juvenile Delta smelt in the smelt biological opin-
19 ion that takes into account all life stages, among other
20 considerations—

21 (1) salvage information collected since at least
22 1993;

23 (2) updated or more recently developed statis-
24 tical models;

25 (3) updated scientific and commercial data; and

1 (4) the most recent information regarding the
2 environmental factors affecting Delta smelt salvage.

3 (b) MODIFIED INCIDENTAL TAKE LEVEL.—Unless
4 the Director determines in writing that one or more of
5 the requirements described in paragraphs (1) through (4)
6 are not appropriate, the modified incidental take level de-
7 scribed in subsection (a) shall—

8 (1) be normalized for the abundance of
9 prespawning adult Delta smelt using the Fall
10 Midwater Trawl Index or other index;

11 (2) be based on a simulation of the salvage that
12 would have occurred from 1993 through 2012 if
13 OMR flow has been consistent with the smelt bio-
14 logical opinions;

15 (3) base the simulation on a correlation between
16 annual salvage rates and historic water clarity and
17 OMR flow during the adult salvage period; and

18 (4) set the incidental take level as the 80 per-
19 cent upper prediction interval derived from simu-
20 lated salvage rates since at least 1993.

21 **SEC. 103. FACTORING INCREASED REAL-TIME MONITORING**
22 **AND UPDATED SCIENCE INTO DELTA SMELT**
23 **MANAGEMENT.**

24 (a) IN GENERAL.—The Director shall use the best
25 scientific and commercial data available to implement,

1 continuously evaluate, and refine or amend, as appro-
2 priate, the reasonable and prudent alternative described
3 in the smelt biological opinion, and any successor opinions
4 or court order. The Secretary shall make all significant
5 decisions under the smelt biological opinion, or any suc-
6 cessor opinions that affect Central Valley Project and
7 State Water Project operations, in writing, and shall docu-
8 ment the significant facts upon which such decisions are
9 made, consistent with section 706 of title 5, United States
10 Code.

11 (b) INCREASED MONITORING TO INFORM REAL-
12 TIME OPERATIONS.—The Secretary shall conduct addi-
13 tional surveys, on an annual basis at the appropriate time
14 of the year based on environmental conditions, in collabo-
15 ration with other Delta science interests.

16 (1) In implementing this section, the Secretary
17 shall—

18 (A) use the most accurate survey methods
19 available for the detection of Delta smelt to de-
20 termine the extent that adult Delta smelt are
21 distributed in relation to certain levels of tur-
22 bidity, or other environmental factors that may
23 influence salvage rate; and

24 (B) use results from appropriate survey
25 methods for the detection of Delta smelt to de-

1 termine how the Central Valley Project and
2 State Water Project may be operated more effi-
3 ciently to minimize salvage while maximizing
4 export pumping rates without causing a signifi-
5 cant negative impact on the long-term survival
6 of the Delta smelt.

7 (2) During the period beginning on December
8 1, 2015, and ending March 31, 2016, and in each
9 successive December through March period, if sus-
10 pended sediment loads enter the Delta from the Sac-
11 ramento River and the suspended sediment loads ap-
12 pear likely to raise turbidity levels in the Old River
13 north of the export pumps from values below 12
14 Nephelometric Turbidity Units (NTU) to values
15 above 12 NTU, the Secretary shall—

16 (A) conduct daily monitoring using appro-
17 priate survey methods at locations including,
18 but not limited to, the vicinity of Station 902
19 to determine the extent that adult Delta smelt
20 are moving with turbidity toward the export
21 pumps; and

22 (B) use results from the monitoring sur-
23 veys referenced in paragraph (A) to determine
24 how increased trawling can inform daily real-
25 time Central Valley Project and State Water

1 Project operations to minimize salvage while
2 maximizing export pumping rates without caus-
3 ing a significant negative impact on the long-
4 term survival of the Delta smelt.

5 (c) PERIODIC REVIEW OF MONITORING.—Within 12
6 months of the date of enactment of this title, and at least
7 once every 5 years thereafter, the Secretary shall—

8 (1) evaluate whether the monitoring program
9 under subsection (b), combined with other moni-
10 toring programs for the Delta, is providing sufficient
11 data to inform Central Valley Project and State
12 Water Project operations to minimize salvage while
13 maximizing export pumping rates without causing a
14 significant negative impact on the long-term survival
15 of the Delta smelt; and

16 (2) determine whether the monitoring efforts
17 should be changed in the short or long term to pro-
18 vide more useful data.

19 (d) DELTA SMELT DISTRIBUTION STUDY.—

20 (1) IN GENERAL.—No later than January 1,
21 2016, and at least every five years thereafter, the
22 Secretary, in collaboration with the California De-
23 partment of Fish and Wildlife, the California De-
24 partment of Water Resources, public water agencies,
25 and other interested entities, shall implement new

1 targeted sampling and monitoring specifically de-
2 signed to understand Delta smelt abundance, dis-
3 tribution, and the types of habitat occupied by Delta
4 smelt during all life stages.

5 (2) SAMPLING.—The Delta smelt distribution
6 study shall, at a minimum—

7 (A) include recording water quality and
8 tidal data;

9 (B) be designed to understand Delta smelt
10 abundance, distribution, habitat use, and move-
11 ment throughout the Delta, Suisun Marsh, and
12 other areas occupied by the Delta smelt during
13 all seasons;

14 (C) consider areas not routinely sampled
15 by existing monitoring programs, including wet-
16 land channels, near-shore water, depths below
17 35 feet, and shallow water; and

18 (D) use survey methods, including sam-
19 pling gear, best suited to collect the most accu-
20 rate data for the type of sampling or moni-
21 toring.

22 (e) SCIENTIFICALLY SUPPORTED IMPLEMENTATION
23 OF OLD AND MIDDLE RIVER FLOW REQUIREMENTS.—In
24 implementing the provisions of the smelt biological opin-
25 ion, or any successor biological opinion or court order, per-

1 taining to management of reverse flow in the Old and Mid-
2 dle River, the Secretary shall—

3 (1) consider the relevant provisions of the bio-
4 logical opinion or any successor biological opinion;

5 (2) to maximize Central Valley project and
6 State Water Project water supplies, manage export
7 pumping rates to achieve a reverse flow rate in Old
8 and Middle River of 5,000 cubic feet per second
9 unless information developed by the Secretary under
10 paragraphs (3) and (4) leads the Secretary to rea-
11 sonably conclude that a less negative OMR flow rate
12 is necessary to avoid a negative impact on the long-
13 term survival of the Delta smelt. If information
14 available to the Secretary indicates that a reverse
15 flow rate in Old and Middle River more negative
16 than 5,000 cubic feet per second can be estab-
17 lished without an imminent negative impact on the
18 long-term survival of the Delta smelt, the Secretary
19 shall manage export pumping rates to achieve that
20 more negative OMR flow rate;

21 (3) document in writing any significant facts
22 about real-time conditions relevant to the determina-
23 tions of OMR reverse flow rates, including—

24 (A) whether targeted real-time fish moni-
25 toring in the Old River pursuant to this section,

1 including monitoring in the vicinity of Station
2 902, indicates that a significant negative impact
3 on the long-term survival of the Delta smelt is
4 imminent; and

5 (B) whether near-term forecasts with avail-
6 able salvage models show under prevailing con-
7 ditions that OMR flow of 5,000 cubic feet per
8 second or higher will cause a significant nega-
9 tive impact on the long-term survival of the
10 Delta smelt;

11 (4) show in writing that any determination to
12 manage OMR reverse flow at rates less negative
13 than 5,000 cubic feet per second is necessary to
14 avoid a significant negative impact on the long-term
15 survival of the Delta smelt, including an explanation
16 of the data examined and the connection between
17 those data and the choice made, after considering—

18 (A) the distribution of Delta smelt
19 throughout the Delta;

20 (B) the potential effects of documented,
21 quantified entrainment on subsequent Delta
22 smelt abundance;

23 (C) the water temperature;

24 (D) other significant factors relevant to
25 the determination; and

1 (E) whether any alternative measures
2 could have a substantially lesser water supply
3 impact; and

4 (5) for any subsequent biological opinion, make
5 the showing required in paragraph (4) for any deter-
6 mination to manage OMR reverse flow at rates less
7 negative than the most negative limit in the biologi-
8 cal opinion if the most negative limit in the biologi-
9 cal opinion is more negative than 5,000 cubic feet
10 per second.

11 (f) MEMORANDUM OF UNDERSTANDING.—No later
12 than December 1, 2015, the Commissioner and the Direc-
13 tor will execute a Memorandum of Understanding (MOU)
14 to ensure that the smelt biological opinion is implemented
15 in a manner that maximizes water supply while complying
16 with applicable laws and regulations. If that MOU alters
17 any procedures set out in the biological opinion, there will
18 be no need to reinitiate consultation if those changes will
19 not have a significant negative impact on the long-term
20 survival on listed species and the implementation of the
21 MOU would not be a major change to implementation of
22 the biological opinion. Any change to procedures that does
23 not create a significant negative impact on the long-term
24 survival to listed species will not alter application of the
25 take permitted by the incidental take statement in the bio-

1 logical opinion under section 7(o)(2) of the Endangered
2 Species Act of 1973.

3 (g) CALCULATION OF REVERSE FLOW IN OMR.—
4 Within 90 days of the enactment of this title, the Sec-
5 retary is directed, in consultation with the California De-
6 partment of Water Resources to revise the method used
7 to calculate reverse flow in Old and Middle River for im-
8 plementation of the reasonable and prudent alternatives
9 in the smelt biological opinion and the salmonid biological
10 opinion, and any succeeding biological opinions, for the
11 purpose of increasing Central Valley Project and State
12 Water Project water supplies. The method of calculating
13 reverse flow in Old and Middle River shall be reevaluated
14 not less than every five years thereafter to achieve max-
15 imum export pumping rates within limits established by
16 the smelt biological opinion, the salmonid biological opin-
17 ion, and any succeeding biological opinions.

18 **TITLE II—ENSURING SALMONID**
19 **MANAGEMENT IS RESPON-**
20 **SIVE TO NEW SCIENCE**

21 **SEC. 201. DEFINITIONS.**

22 In this title:

23 (1) ASSISTANT ADMINISTRATOR.—The term
24 “Assistant Administrator” means the Assistant Ad-

1 administrator of National Oceanic and Atmospheric
2 Administration for Fisheries.

3 (2) SECRETARY.—The term “Secretary” means
4 the Secretary of Commerce.

5 (3) OTHER AFFECTED INTERESTS.—The term
6 “other affected interests” means the State of Cali-
7 fornia, Indian tribes, subdivisions of the State of
8 California, public water agencies and those who ben-
9 efit directly and indirectly from the operations of the
10 Central Valley Project and the State Water Project.

11 (4) COMMISSIONER.—The term “Commis-
12 sioner” means the Commissioner of the Bureau of
13 Reclamation.

14 (5) DIRECTOR.—The term “Director” means
15 the Director of the United States Fish and Wildlife
16 Service.

17 **SEC. 202. PROCESS FOR ENSURING SALMONID MANAGE-**
18 **MENT IS RESPONSIVE TO NEW SCIENCE.**

19 (a) GENERAL DIRECTIVE.—The reasonable and pru-
20 dent alternative described in the salmonid biological opin-
21 ion allows for and anticipates adjustments in Central Val-
22 ley Project and State Water Project operation parameters
23 to reflect the best scientific and commercial data currently
24 available, and authorizes efforts to test and evaluate im-
25 provements in operations that will meet applicable regu-

1 latory requirements and maximize Central Valley Project
2 and State Water Project water supplies and reliability.
3 Implementation of the reasonable and prudent alternative
4 described in the salmonid biological opinion shall be ad-
5 justed accordingly as new scientific and commercial data
6 are developed. The Commissioner and the Assistant Ad-
7 ministrator shall fully utilize these authorities as described
8 below.

9 (b) ANNUAL REVIEWS OF CERTAIN CENTRAL VAL-
10 LEY PROJECT AND STATE WATER PROJECT OPER-
11 ATIONS.—No later than December 31, 2016, and at least
12 annually thereafter:

13 (1) The Commissioner, with the assistance of
14 the Assistant Administrator, shall examine and iden-
15 tify adjustments to the initiation of Action IV.2.3 as
16 set forth in the Biological Opinion and Conference
17 Opinion on the Long-Term Operations of the Cen-
18 tral Valley Project and State Water Project, Endan-
19 gered Species Act Section 7 Consultation, issued by
20 the National Marine Fisheries Service on June 4,
21 2009, pertaining to negative OMR flows, subject to
22 paragraph (5).

23 (2) The Commissioner, with the assistance of
24 the Assistant Administrator, shall examine and iden-
25 tify adjustments in the timing, triggers or other

1 operational details relating to the implementation of
2 pumping restrictions in Action IV.2.1 pertaining to
3 the inflow to export ratio, subject to paragraph (5).

4 (3) Pursuant to the consultation and assess-
5 ments carried out under paragraphs (1) and (2) of
6 this subsection, the Commissioner and the Assistant
7 Administrator shall jointly make recommendations
8 to the Secretary of the Interior and to the Secretary
9 of Commerce on adjustments to project operations
10 that, in the exercise of the adaptive management
11 provisions of the salmonid biological opinion, will re-
12 duce water supply impacts of the salmonid biological
13 opinion on the Central Valley Project and the Cali-
14 fornia State Water Project and are consistent with
15 the requirements of applicable law and as further
16 described in subsection (c).

17 (4) The Secretary of Commerce and the Sec-
18 retary of the Interior shall direct the Commissioner
19 and Assistant Administrator to implement rec-
20 ommended adjustments to Central Valley Project
21 and State Water Project operations for which the
22 conditions under subsection (c) are met.

23 (5) The Assistant Administrator and the Com-
24 missioner shall review and identify adjustments to
25 Central Valley Project and State Water Project op-

1 erations with water supply restrictions in any suc-
2 cessor biological opinion to the salmonid biological
3 opinion, applying the provisions of this section to
4 those water supply restrictions where there are ref-
5 erences to Actions IV.2.1 and IV.2.3.

6 (c) IMPLEMENTATION OF OPERATIONAL ADJUST-
7 MENTS.—After reviewing the recommendations under sub-
8 section (b), the Secretary of the Interior and the Secretary
9 of Commerce shall direct the Commissioner and the As-
10 sistant Administrator to implement those operational ad-
11 justments, or any combination, for which, in aggregate—

12 (1) the net effect on listed species is equivalent
13 to those of the underlying project operational param-
14 eters in the salmonid biological opinion, taking into
15 account both—

16 (A) efforts to minimize the adverse effects
17 of the adjustment to project operations; and

18 (B) whatever additional actions or meas-
19 ures may be implemented in conjunction with
20 the adjustments to operations to offset the ad-
21 verse effects to listed species, consistent with
22 (d), that are in excess of the adverse effects of
23 the underlying operational parameters, if any;
24 and

1 (2) the effects of the adjustment can be reason-
2 ably expected to fall within the incidental take au-
3 thorizations.

4 (d) EVALUATION OF OFFSETTING MEASURES.—
5 When examining and identifying opportunities to offset
6 the potential adverse effect of adjustments to operations
7 under subsection (c)(1)(B), the Commissioner and the As-
8 sistant Administrator shall take into account the potential
9 species survival improvements that are likely to result
10 from other measures which, if implemented in conjunction
11 with such adjustments, would offset adverse effects, if any,
12 of the adjustments. When evaluating offsetting measures,
13 the Commissioner and the Assistant Administrator shall
14 consider the type, timing and nature of the adverse effects,
15 if any, to specific species and ensure that the measures
16 likely provide equivalent overall benefits to the listed spe-
17 cies in the aggregate, as long as the change will not cause
18 a significant negative impact on the long-term survival of
19 a listed salmonid species.

20 (e) FRAMEWORK FOR EXAMINING OPPORTUNITIES
21 TO MINIMIZE OR OFFSET THE POTENTIAL ADVERSE EF-
22 FECT OF ADJUSTMENTS TO OPERATIONS.—Not later than
23 December 31, 2015, and every five years thereafter, the
24 Assistant Administrator shall, in collaboration with the
25 Director of the California Department of Fish and Wild-

1 life, based on the best scientific and commercial data avail-
2 able and for each listed salmonid species, issue estimates
3 of the increase in through-Delta survival the Secretary ex-
4 pects to be achieved—

5 (1) through restrictions on export pumping
6 rates as specified by Action IV.2.3 as compared to
7 limiting OMR flow to a fixed rate of 5,000 cubic
8 feet per second within the time period Action IV.2.3
9 is applicable, based on a given rate of San Joaquin
10 River inflow to the Delta and holding other relevant
11 factors constant;

12 (2) through San Joaquin River inflow to export
13 restrictions on export pumping rates specified within
14 Action IV.2.1 as compared to the restrictions in the
15 April/May period imposed by the State Water Re-
16 sources Control Board decision D-1641, based on a
17 given rate of San Joaquin River inflow to the Delta
18 and holding other relevant factors constant;

19 (3) through physical habitat restoration im-
20 provements;

21 (4) through predation control programs;

22 (5) through the installation of temporary bar-
23 riers, the management of Cross Channel Gates oper-
24 ations, and other projects affecting flow in the
25 Delta;

1 (6) through salvaging fish that have been en-
2 trained near the entrance to Clifton Court Forebay;

3 (7) through any other management measures
4 that may provide equivalent or better protections for
5 listed species while maximizing export pumping rates
6 without causing a significant negative impact on the
7 long-term survival of a listed salmonid species; and

8 (8) through development and implementation of
9 conservation hatchery programs for salmon and
10 steelhead to aid in the recovery of listed salmon and
11 steelhead species.

12 (f) SURVIVAL ESTIMATES.—

13 (1) To the maximum extent practicable, the As-
14 sistant Administrator shall make quantitative esti-
15 mates of survival such as a range of percentage in-
16 creases in through-Delta survival that could result
17 from the management measures, and if the scientific
18 information is lacking for quantitative estimates,
19 shall do so on qualitative terms based upon the best
20 available science.

21 (2) If the Assistant Administrator provides
22 qualitative survival estimates for a species resulting
23 from one or more management measures, the Sec-
24 retary shall, to the maximum extent feasible, rank
25 the management measures described in subsection

1 (e) in terms of their most likely expected contribu-
2 tion to increased through-Delta survival relative to
3 the other measures.

4 (3) If at the time the Assistant Administrator
5 conducts the reviews under subsection (b), the Sec-
6 retary has not issued an estimate of increased
7 through-Delta survival from different management
8 measures pursuant to subsection (e), the Secretary
9 shall compare the protections to the species from
10 different management measures based on the best
11 scientific and commercial data available at the time.

12 (g) COMPARISON OF ADVERSE CONSEQUENCES FOR
13 ALTERNATIVE MANAGEMENT MEASURES OF EQUIVALENT
14 PROTECTION FOR A SPECIES.—

15 (1) For the purposes of this subsection and
16 subsection (c)—

17 (A) the alternative management measure
18 or combination of alternative management
19 measures identified in paragraph (2) shall be
20 known as the “equivalent alternative measure”;

21 (B) the existing measure or measures iden-
22 tified in subparagraphs (2) (A), (B), (C), or
23 (D) shall be known as the “equivalent existing
24 measure”; and

1 (C) an “equivalent increase in through-
2 Delta survival rates for listed salmonid species”
3 shall mean an increase in through-Delta sur-
4 vival rates that is equivalent when considering
5 the change in through-Delta survival rates for
6 the listed salmonid species in the aggregate,
7 and not the same change for each individual
8 species, as long as the change in survival rates
9 will not cause a significant negative impact on
10 the long-term survival of a listed salmonid spe-
11 cies.

12 (2) As part of the reviews of project operations
13 pursuant to subsection (b), the Assistant Adminis-
14 trator shall determine whether any alternative man-
15 agement measures or combination of alternative
16 management measures listed in subsection (e) (3)
17 through (8) would provide an increase in through-
18 Delta survival rates for listed salmonid species that
19 is equivalent to the increase in through-Delta sur-
20 vival rates for listed salmonid species from the fol-
21 lowing:

22 (A) Through restrictions on export pump-
23 ing rates as specified by Action IV.2.3, as com-
24 pared to limiting OMR flow to a fixed rate of

1 5,000 cubic feet per second within the time
2 period Action IV.2.3 is applicable.

3 (B) Through restrictions on export pump-
4 ing rates as specified by Action IV.2.3, as com-
5 pared to a modification of Action IV.2.3 that
6 would provide additional water supplies, other
7 than that described in subparagraph (A).

8 (C) Through San Joaquin River inflow to
9 export restrictions on export pumping rates
10 specified within Action IV.2.1, as compared to
11 the restrictions in the April/May period imposed
12 by the State Water Resources Control Board
13 decision D-1641.

14 (D) Through San Joaquin River inflow to
15 export restrictions on export pumping rates
16 specified within Action IV.2.1, as compared to
17 a modification of Action IV.2.1 that would re-
18 duce water supply impacts of the salmonid bio-
19 logical opinion on the Central Valley Project
20 and the California State Water Project, other
21 than that described in subparagraph (C).

22 (3) If the Assistant Administrator identifies an
23 equivalent alternative measure pursuant to para-
24 graph (2), the Assistant Administrator shall deter-
25 mine whether—

1 (A) it is technically feasible and within
2 Federal jurisdiction to implement the equivalent
3 alternative measure;

4 (B) the State of California, or subdivision
5 thereof, or local agency with jurisdiction has
6 certified in writing within 10 calendar days to
7 the Assistant Administrator that it has the au-
8 thority and capability to implement the perti-
9 nent equivalent alternative measure; or

10 (C) the adverse consequences of doing so
11 are less than the adverse consequences of the
12 equivalent existing measure, including a concise
13 evaluation of the adverse consequences to other
14 affected interests.

15 (4) If the Assistant Administrator makes the
16 determinations in subparagraph (3)(A) or (3)(B),
17 the Commissioner shall adjust project operations to
18 implement the equivalent alternative measure in
19 place of the equivalent existing measure in order to
20 increase export rates of pumping to the greatest ex-
21 tent possible while maintaining a net combined effect
22 of equivalent through-Delta survival rates for the
23 listed salmonid species.

24 (h) TRACKING ADVERSE EFFECTS BEYOND THE
25 RANGE OF EFFECTS ACCOUNTED FOR IN THE SALMONID

1 BIOLOGICAL OPINION AND COORDINATED OPERATION
2 WITH THE DELTA SMELT BIOLOGICAL OPINION.—

3 (1) Among the adjustments to the project oper-
4 ations considered through the adaptive management
5 process under this section, the Assistant Adminis-
6 trator and the Commissioner shall—

7 (A) evaluate the effects on listed salmonid
8 species and water supply of the potential ad-
9 justment to operational criteria described in
10 subparagraph (B); and

11 (B) consider requiring that before some or
12 all of the provisions of Actions IV.2.1. or IV.2.3
13 are imposed in any specific instance, the Assist-
14 ant Administrator show that the implementa-
15 tion of these provisions in that specific instance
16 is necessary to avoid a significant negative im-
17 pact on the long-term survival of a listed
18 salmonid species.

19 (2) The Assistant Administrator, the Director,
20 and the Commissioner, in coordination with State of-
21 ficials as appropriate, shall establish operational cri-
22 teria to coordinate management of OMR flows under
23 the smelt and salmonid biological opinions, in order
24 to take advantage of opportunities to provide addi-

1 tional water supplies from the coordinated imple-
2 mentation of the biological opinions.

3 (3) The Assistant Administrator and the Com-
4 missioner shall document the effects of any adaptive
5 management decisions related to the coordinated op-
6 eration of the smelt and salmonid biological opinions
7 that prioritizes the maintenance of one species at the
8 expense of the other.

9 (i) REAL-TIME MONITORING AND MANAGEMENT.—
10 Notwithstanding the calendar based triggers described in
11 the salmonid biological opinion Reasonable and Prudent
12 Alternative (RPA), the Assistant Administrator and the
13 Commissioner shall not limit OMR reverse flow to 5,000
14 cubic feet per second unless current monitoring data indi-
15 cate that this OMR flow limitation is reasonably required
16 to avoid a significant negative impact on the long-term
17 survival of a listed salmonid species.

18 (j) EVALUATION AND IMPLEMENTATION OF MANAGE-
19 MENT MEASURES.—If the quantitative estimates of
20 through-Delta survival established by the Secretary for the
21 adjustments in subsection (b)(2) exceed the through-Delta
22 survival established for the RPAs, the Secretary shall
23 evaluate and implement the management measures in sub-
24 section (b)(2) as a prerequisite to implementing the RPAs
25 contained in the Salmonid Biological Opinion.

1 (k) ACCORDANCE WITH OTHER LAW.—Consistent
2 with section 706 of title 5, United States Code, decisions
3 of the Assistant Administrator and the Commissioner de-
4 scribed in subsections (b) through (j) shall be made in
5 writing, on the basis of best scientific and commercial data
6 currently available, and shall include an explanation of the
7 data examined at the connection between those data and
8 the decisions made.

9 **SEC. 203. NON-FEDERAL PROGRAM TO PROTECT NATIVE**
10 **ANADROMOUS FISH IN THE STANISLAUS**
11 **RIVER.**

12 (a) ESTABLISHMENT OF NONNATIVE PREDATOR
13 FISH REMOVAL PROGRAM.—The Secretary and the dis-
14 tricts, in consultation with the Director, shall jointly de-
15 velop and conduct a nonnative predator fish removal pro-
16 gram to remove nonnative striped bass, smallmouth bass,
17 largemouth bass, black bass, and other nonnative predator
18 fish species from the Stanislaus River. The program
19 shall—

20 (1) be scientifically based;

21 (2) include methods to quantify the number and
22 size of predator fish removed each year, the impact
23 of such removal on the overall abundance of pred-
24 ator fish, and the impact of such removal on the
25 populations of juvenile anadromous fish found in the

1 Stanislaus River by, among other things, evaluating
2 the number of juvenile anadromous fish that migrate
3 past the rotary screw trap located at Caswell;

4 (3) among other methods, use wire fyke trap-
5 ping, portable resistance board weirs, and boat
6 electrofishing; and

7 (4) be implemented as quickly as possible fol-
8 lowing the issuance of all necessary scientific re-
9 search.

10 (b) MANAGEMENT.—The management of the pro-
11 gram shall be the joint responsibility of the Secretary and
12 the districts. Such parties shall work collaboratively to en-
13 sure the performance of the program, and shall discuss
14 and agree upon, among other things, changes in the struc-
15 ture, management, personnel, techniques, strategy, data
16 collection, reporting, and conduct of the program.

17 (c) CONDUCT.—

18 (1) IN GENERAL.—By agreement between the
19 Secretary and the districts, the program may be con-
20 ducted by their own personnel, qualified private con-
21 tractors hired by the districts, personnel of, on loan
22 to, or otherwise assigned to the National Marine
23 Fisheries Service, or a combination thereof.

24 (2) PARTICIPATION BY THE NATIONAL MARINE
25 FISHERIES SERVICE.—If the districts elect to con-

1 duct the program using their own personnel or quali-
2 fied private contractors hired by them in accordance
3 with paragraph (1), the Secretary may assign an
4 employee of, on loan to, or otherwise assigned to the
5 National Marine Fisheries Service, to be present for
6 all activities performed in the field. Such presence
7 shall ensure compliance with the agreed-upon ele-
8 ments specified in subsection (b). The districts shall
9 pay the cost of such participation in accordance with
10 subsection (d).

11 (3) TIMING OF ELECTION.—The districts shall
12 notify the Secretary of their election on or before
13 October 15 of each calendar year of the program.
14 Such an election shall apply to the work performed
15 in the subsequent calendar year.

16 (d) FUNDING.—

17 (1) IN GENERAL.—The districts shall be re-
18 sponsible for 100 percent of the cost of the program.

19 (2) CONTRIBUTED FUNDS.—The Secretary may
20 accept and use contributions of funds from the dis-
21 tricts to carry out activities under the program.

22 (3) ESTIMATION OF COST.—On or before De-
23 cember 1 of each year of the program, the Secretary
24 shall submit to the districts an estimate of the cost
25 to be incurred by the National Marine Fisheries

1 Service for the program in the following calendar
2 year, if any, including the cost of any data collection
3 and posting under subsection (e). If an amount
4 equal to the estimate is not provided through con-
5 tributions pursuant to paragraph (2) before Decem-
6 ber 31 of that year—

7 (A) the Secretary shall have no obligation
8 to conduct the program activities otherwise
9 scheduled for such following calendar year until
10 such amount is contributed by the districts; and

11 (B) the districts may not conduct any as-
12 pect of the program until such amount is con-
13 tributed by the districts.

14 (4) ACCOUNTING.—On or before September 1
15 of each year, the Secretary shall provide to the dis-
16 tricts an accounting of the costs incurred by the Sec-
17 retary for the program in the preceding calendar
18 year. If the amount contributed by the districts pur-
19 suant to paragraph (2) for that year was greater
20 than the costs incurred by the Secretary, the Sec-
21 retary shall—

22 (A) apply the excess contributions to costs
23 of activities to be performed by the Secretary
24 under the program, if any, in the next calendar
25 year; or

1 (B) if no such activities are to be per-
2 formed, repay the excess contribution to the
3 districts.

4 (e) POSTING AND EVALUATION.—On or before the
5 15th day of each month, the Secretary shall post on the
6 Internet website of the National Marine Fisheries Service
7 a tabular summary of the raw data collected under the
8 program in the preceding month.

9 (f) IMPLEMENTATION.—The program is hereby found
10 to be consistent with the requirements of the Central Val-
11 ley Project Improvement Act (Public Law 102–575). No
12 provision, plan or definition established or required by the
13 Central Valley Project Improvement Act (Public Law
14 102–575) shall be used to prohibit the imposition of the
15 program, or to prevent the accomplishment of its goals.

16 (g) TREATMENT OF STRIPED BASS.—For purposes
17 of the application of the Central Valley Project Improve-
18 ment Act (title XXXIV of Public Law 102–575) with re-
19 spect to the program, striped bass shall not be treated as
20 anadromous fish.

21 (h) DEFINITION.—For the purposes of this section,
22 the term “districts” means the Oakdale Irrigation District
23 and the South San Joaquin Irrigation District, California.

1 **TITLE III—OPERATIONAL FLEXI-**
2 **BILITY AND DROUGHT RE-**
3 **LIEF**

4 **SEC. 301. DEFINITIONS.**

5 In this title:

6 (1) CENTRAL VALLEY PROJECT.—The term
7 “Central Valley Project” has the meaning given the
8 term in section 3403 of the Central Valley Project
9 Improvement Act (Public Law 102–575; 106 Stat.
10 4707).

11 (2) RECLAMATION PROJECT.—The term “Rec-
12 lamation Project” means a project constructed pur-
13 suant to the authorities of the reclamation laws and
14 whose facilities are wholly or partially located in the
15 State.

16 (3) SECRETARIES.—The term “Secretaries”
17 means—

18 (A) the Secretary of Agriculture;

19 (B) the Secretary of Commerce; and

20 (C) the Secretary of the Interior.

21 (4) STATE WATER PROJECT.—The term “State
22 Water Project” means the water project described
23 by California Water Code section 11550 et seq. and
24 operated by the California Department of Water Re-
25 sources.

1 (5) STATE.—The term “State” means the State
2 of California.

3 **SEC. 302. OPERATIONAL FLEXIBILITY IN TIMES OF**
4 **DROUGHT.**

5 (a) WATER SUPPLIES.—For the period of time such
6 that in any year that the Sacramento Valley Index is 6.5
7 or lower, or at the request of the State of California, and
8 until two succeeding years following either of those events
9 have been completed where the final Sacramento Valley
10 Index is 7.8 or greater, the Secretaries shall provide the
11 maximum quantity of water supplies practicable to all in-
12 dividuals or district who receive Central Valley Project
13 water under water service or repayments contracts, water
14 rights settlement contracts, exchange contracts, or refuge
15 contracts or agreements entered into prior to or after the
16 date of enactment of this title; State Water Project con-
17 tractors, and any other tribe, locality, water agency, or
18 municipality in the State, by approving, consistent with
19 applicable laws (including regulations), projects and oper-
20 ations to provide additional water supplies as quickly as
21 practicable based on available information to address the
22 emergency conditions.

23 (b) ADMINISTRATION.—In carrying out subsection
24 (a), the Secretaries shall, consistent with applicable laws
25 (including regulations)—

1 (1) issue all necessary permit decisions under
2 the authority of the Secretaries not later than 30
3 days after the date on which the Secretaries receive
4 a completed application from the State to place and
5 use temporary barriers or operable gates in Delta
6 channels to improve water quantity and quality for
7 the State Water Project and the Central Valley
8 Project south of Delta water contractors and other
9 water users, on the condition that the barriers or op-
10 erable gates—

11 (A) do not result in a significant negative
12 impact on the long-term survival of listed spe-
13 cies within the Delta and provide benefits or
14 have a neutral impact on in-Delta water user
15 water quality; and

16 (B) are designed so that formal consulta-
17 tions under section 7 of the Endangered Spe-
18 cies Act of 1973 (16 U.S.C. 1536) are not nec-
19 essary;

20 (2) require the Director of the United States
21 Fish and Wildlife Service and the Commissioner of
22 Reclamation—

23 (A) to complete, not later than 30 days
24 after the date on which the Director or the
25 Commissioner receives a complete written re-

1 quest for water transfer, all requirements under
2 the National Environmental Policy Act of 1969
3 (42 U.S.C. 4321 et seq.) and the Endangered
4 Species Act of 1973 (16 U.S.C. 1531 et seq.)
5 necessary to make final permit decisions on the
6 request; and

7 (B) to approve any water transfer request
8 described in subparagraph (A) to maximize the
9 quantity of water supplies available for non-
10 habitat uses, on the condition that actions asso-
11 ciated with the water transfer comply with ap-
12 plicable Federal laws (including regulations);

13 (3) adopt a 1:1 inflow to export ratio, as meas-
14 ured as a 3-day running average at Vernalis during
15 the period beginning on April 1, and ending on May
16 31, absent a determination in writing that a more
17 restrictive inflow to export ratio is required to avoid
18 a significant negative impact on the long-term sur-
19 vival of a listed salmonid species under the Endan-
20 gered Species Act of 1973 (16 U.S.C. 1531 et seq.);
21 provided that the 1:1 inflow to export ratio shall
22 apply for the increment of increased flow of the San
23 Joaquin River resulting from the voluntary sale,
24 transfers, or exchanges of water from agencies with
25 rights to divert water from the San Joaquin River

1 or its tributaries and provided that the movement of
2 the acquired, transferred, or exchanged water
3 through the Delta consistent with the Central Valley
4 Project's and the State Water Project's permitted
5 water rights and provided that movement of the
6 Central Valley Project water is consistent with the
7 requirements of section 3405(a)(1)(H) of the Cen-
8 tral Valley Project Improvement Act; and

9 (4) allow and facilitate, consistent with existing
10 priorities, water transfers through the C.W. "Bill"
11 Jones Pumping Plant or the Harvey O. Banks
12 Pumping Plant from April 1 to November 30 pro-
13 vided water transfers comply with State law, includ-
14 ing the California Environmental Quality Act.

15 (c) ACCELERATED PROJECT DECISION AND ELE-
16 VATION.—

17 (1) IN GENERAL.—On request by the Governor
18 of the State, the Secretaries shall use the expedited
19 procedures under this subsection to make final deci-
20 sions relating to a Federal project or operation, or
21 to local or State projects or operations that require
22 decisions by the Secretary of the Interior or the Sec-
23 retary of Commerce to provide additional water sup-
24 plies if the project's or operation's purpose is to pro-

1 vide relief for emergency drought conditions pursu-
2 ant to subsections (a) and (b).

3 (2) REQUEST FOR RESOLUTION.—

4 (A) IN GENERAL.—On request by the Gov-
5 ernor of the State, the Secretaries referenced in
6 paragraph (1), or the head of another Federal
7 agency responsible for carrying out a review of
8 a project, as applicable, the Secretary of the In-
9 terior shall convene a final project decision
10 meeting with the heads of all relevant Federal
11 agencies to decide whether to approve a project
12 to provide relief for emergency drought condi-
13 tions.

14 (B) MEETING.—The Secretary of the Inte-
15 rior shall convene a meeting requested under
16 subparagraph (A) not later than 7 days after
17 the date on which the meeting request is re-
18 ceived.

19 (3) NOTIFICATION.—On receipt of a request for
20 a meeting under paragraph (2), the Secretary of the
21 Interior shall notify the heads of all relevant Federal
22 agencies of the request, including information on the
23 project to be reviewed and the date of the meeting.

24 (4) DECISION.—Not later than 10 days after
25 the date on which a meeting is requested under

1 paragraph (2), the head of the relevant Federal
2 agency shall issue a final decision on the project,
3 subject to subsection (e)(2).

4 (5) MEETING CONVENED BY SECRETARY.—The
5 Secretary of the Interior may convene a final project
6 decision meeting under this subsection at any time,
7 at the discretion of the Secretary, regardless of
8 whether a meeting is requested under paragraph (2).

9 (d) APPLICATION.—To the extent that a Federal
10 agency, other than the agencies headed by the Secretaries,
11 has a role in approving projects described in subsections
12 (a) and (b), this section shall apply to those Federal agen-
13 cies.

14 (e) LIMITATION.—Nothing in this section authorizes
15 the Secretaries to approve projects—

16 (1) that would otherwise require congressional
17 authorization; or

18 (2) without following procedures required by
19 applicable law.

20 (f) DROUGHT PLAN.—For the period of time such
21 that in any year that the Sacramento Valley index is 6.5
22 or lower, or at the request of the State of California, and
23 until two succeeding years following either of those events
24 have been completed where the final Sacramento Valley
25 Index is 7.8 or greater, the Secretaries of Commerce and

1 the Interior, in consultation with appropriate State offi-
2 cials, shall develop a drought operations plan that is con-
3 sistent with the provisions of this Act including the provi-
4 sions that are intended to provide additional water sup-
5 plies that could be of assistance during the current
6 drought.

7 **SEC. 303. OPERATION OF CROSS-CHANNEL GATES.**

8 (a) IN GENERAL.—The Secretary of Commerce and
9 the Secretary of the Interior shall jointly—

10 (1) authorize and implement activities to ensure
11 that the Delta Cross Channel Gates remain open to
12 the maximum extent practicable using findings from
13 the United States Geological Survey on diurnal be-
14 havior of juvenile salmonids, timed to maximize the
15 peak flood tide period and provide water supply and
16 water quality benefits for the duration of the
17 drought emergency declaration of the State, and for
18 the period of time such that in any year that the
19 Sacramento Valley index is 6.5 or lower, or at the
20 request of the State of California, and until two suc-
21 ceeding years following either of those events have
22 been completed where the final Sacramento Valley
23 Index is 7.8 or greater, consistent with operational
24 criteria and monitoring criteria set forth into the
25 Order Approving a Temporary Urgency Change in

1 License and Permit Terms in Response to Drought
2 Conditions of the California State Water Resources
3 Control Board, effective January 31, 2014 (or a suc-
4 cessor order) and other authorizations associated
5 with it;

6 (2) with respect to the operation of the Delta
7 Cross Channel Gates described in paragraph (1),
8 collect data on the impact of that operation on—

9 (A) species listed as threatened or endan-
10 gered under the Endangered Species Act of
11 1973 (16 U.S.C. 1531 et seq.);

12 (B) water quality; and

13 (C) water supply;

14 (3) collaborate with the California Department
15 of Water Resources to install a deflection barrier at
16 Georgiana Slough in coordination with Delta Cross
17 Channel Gate diurnal operations to protect migrat-
18 ing salmonids, consistent with knowledge gained
19 from activities carried out during 2014 and 2015;

20 (4) evaluate the combined salmonid survival in
21 light of activities carried out pursuant to paragraphs
22 (1) through (3) in deciding how to operate the Delta
23 Cross Channel gates to enhance salmonid survival
24 and water supply benefits; and

1 (5) not later than May 15, 2016, submit to the
2 appropriate committees of the House of Representa-
3 tives and the Senate a notice and explanation on the
4 extent to which the gates are able to remain open.

5 (b) RECOMMENDATIONS.—After assessing the infor-
6 mation collected under subsection (a), the Secretary of the
7 Interior shall recommend revisions to the operation of the
8 Delta Cross-Channel Gates, to the Central Valley Project,
9 and to the State Water Project, including, if appropriate,
10 any reasonable and prudent alternative contained in the
11 biological opinion issued by the National Marine Fisheries
12 Service on June 4, 2009, that are likely to produce water
13 supply benefits without causing a significant negative im-
14 pact on the long-term survival of the listed fish species
15 within the Delta or on water quality.

16 **SEC. 304. FLEXIBILITY FOR EXPORT/INFLOW RATIO.**

17 For the period of time such that in any year that
18 the Sacramento Valley index is 6.5 or lower, or at the re-
19 quest of the State of California, and until two succeeding
20 years following either of those events have been completed
21 where the final Sacramento Valley Index is 7.8 or greater,
22 the Commissioner of the Bureau of Reclamation shall con-
23 tinue to vary the averaging period of the Delta Export/
24 Inflow ratio pursuant to the California State Water Re-
25 sources Control Board decision D1641—

1 (1) to operate to a 35-percent Export/Inflow
2 ratio with a 3-day averaging period on the rising
3 limb of a Delta inflow hydrograph; and

4 (2) to operate to a 14-day averaging period on
5 the falling limb of the Delta inflow hydrograph.

6 **SEC. 305. EMERGENCY ENVIRONMENTAL REVIEWS.**

7 (a) NEPA COMPLIANCE.—To minimize the time
8 spent carrying out environmental reviews and to deliver
9 water quickly that is needed to address emergency drought
10 conditions in the State during the duration of an emer-
11 gency drought declaration, the Secretaries shall, in car-
12 rying out this Act, consult with the Council on Environ-
13 mental Quality in accordance with section 1506.11 of title
14 40, Code of Federal Regulations (including successor reg-
15 ulations), to develop alternative arrangements to comply
16 with the National Environmental Policy Act of 1969 (42
17 U.S.C. 4321 et seq.) during the emergency.

18 (b) DETERMINATIONS.—For the purposes of this sec-
19 tion, a Secretary may deem a project to be in compliance
20 with all necessary environmental regulations and reviews
21 if the Secretary determines that the immediate implemen-
22 tation of the project is necessary to address—

23 (1) human health and safety; or

24 (2) a specific and imminent loss of agriculture
25 production upon which an identifiable region de-

1 pendes for 25 percent or more of its tax revenue used
2 to support public services including schools, fire or
3 police services, city or county health facilities, unem-
4 ployment services or other associated social services.

5 **SEC. 306. INCREASED FLEXIBILITY FOR REGULAR PROJECT**
6 **OPERATIONS.**

7 The Secretaries shall, consistent with applicable laws
8 (including regulations)—

9 (1) help meet the contract water supply needs
10 of Central Valley Project refuges through the im-
11 provement or installation of water conservation
12 measures, water conveyance facilities, and wells to
13 use groundwater resources, on the condition that
14 those activities may only be accomplished by using
15 funding made available under Reclamation programs
16 of the Department of the Interior;

17 (2) make available to individuals or districts
18 who receive water from the United States under
19 water rights settlement contracts, exchange con-
20 tracts, water service or repayment contracts the ad-
21 ditional water obtained from the activities carried
22 out under subparagraph (1);

23 (3) in coordination with the California Depart-
24 ment of Water Resources and the California Depart-
25 ment of Fish and Wildlife, implement offsite up-

1 stream projects in the Delta and upstream of the
2 Sacramento River and San Joaquin basins that off-
3 set the effects on species listed as threatened or en-
4 dangered under the Endangered Species Act of 1973
5 (16 U.S.C. 1531 et seq.) due to activities carried out
6 pursuant this Act, as determined by the Secretaries;

7 (4) manage reverse flow in the Old and Middle
8 Rivers at 6,100 cubic feet per second if real-time
9 monitoring indicates that flows of 6,100 cubic feet
10 per second or more negative can be established for
11 specific periods without causing a significant nega-
12 tive impact on the long-term survival of the Delta
13 smelt, or if real-time monitoring does not support
14 flows of 6,100 cubic feet per second than manage
15 OMR flows at 5,000 cubic feet per second subject
16 to section 103(e) (3) and (4); and

17 (5) use all available scientific tools to identify
18 any changes to real-time operations of the Bureau of
19 Reclamation, State, and local water projects that
20 could result in the availability of additional water
21 supplies.

22 **SEC. 307. TEMPORARY OPERATIONAL FLEXIBILITY FOR**
23 **FIRST FEW STORMS OF THE WATER YEAR.**

24 (a) IN GENERAL.—Consistent with avoiding a signifi-
25 cant negative impact on the long-term survival in the short

1 term upon listed fish species beyond the range of those
2 authorized under the Endangered Species Act of 1973 and
3 other environmental protections under subsection (e), the
4 Secretaries shall authorize the Central Valley Project and
5 the State Water Project, combined, to operate at levels
6 that result in negative OMR flows at 7,500 cubic feet
7 per second (based on United States Geological Survey
8 gauges on Old and Middle Rivers) daily average for 56
9 cumulative days after October 1 as described in subsection
10 (c).

11 (b) DAYS OF TEMPORARY OPERATIONAL FLEXI-
12 BILITY.—The temporary operational flexibility described
13 in subsection (a) shall be authorized on days that the Cali-
14 fornia Department of Water Resources determines the
15 daily average river flow of the Sacramento River is at, or
16 above, 17,000 cubic feet per second as measured at the
17 Sacramento River at Freeport gauge maintained by the
18 United States Geologic Survey.

19 (c) COMPLIANCE WITH ENDANGERED SPECIES ACT
20 AUTHORIZATIONS.—In carrying out this section, the Sec-
21 retaries may continue to impose any requirements under
22 the smelt and salmonid biological opinions during any pe-
23 riod of temporary operational flexibility as they determine
24 are reasonably necessary to avoid an additional significant
25 negative impacts on the long-term survival of a listed fish

1 species beyond the range of those authorized under the
2 Endangered Species Act of 1973, provided that the re-
3 quirements imposed do not reduce water supplies available
4 for the Central Valley Project and the State Water
5 Project.

6 (d) OTHER ENVIRONMENTAL PROTECTIONS.—

7 (1) STATE LAW.—The Secretaries' actions
8 under this section shall be consistent with applicable
9 regulatory requirements under State law.

10 (2) FIRST SEDIMENT FLUSH.—During the first
11 flush of sediment out of the Delta in each water
12 year, and provided that such determination is based
13 upon objective evidence, OMR flow may be managed
14 at rates less negative than 5,000 cubic feet per
15 second for a minimum duration to avoid movement
16 of adult Delta smelt (*Hypomesus transpacificus*) to
17 areas in the southern Delta that would be likely to
18 increase entrainment at Central Valley Project and
19 State Water Project pumping plants.

20 (3) APPLICABILITY OF OPINION.—This section
21 shall not affect the application of the salmonid bio-
22 logical opinion from April 1 to May 31, unless the
23 Secretary of Commerce finds that some or all of
24 such applicable requirements may be adjusted dur-
25 ing this time period to provide emergency water sup-

1 ply relief without resulting in additional adverse ef-
2 fects beyond those authorized under the Endangered
3 Species Act of 1973. In addition to any other ac-
4 tions to benefit water supply, the Secretary of the
5 Interior and the Secretary of Commerce shall con-
6 sider allowing through-Delta water transfers to
7 occur during this period if they can be accomplished
8 consistent with section 3405(a)(1)(H) of the Central
9 Valley Project Improvement Act. Water transfers
10 solely or exclusively through the State Water Project
11 are not required to be consistent with section
12 3405(a)(1)(H) of the Central Valley Project Im-
13 provement Act.

14 (4) MONITORING.—During operations under
15 this section, the Commissioner of Reclamation, in
16 coordination with the Fish and Wildlife Service, Na-
17 tional Marine Fisheries Service, and California De-
18 partment of Fish and Wildlife, shall undertake a
19 monitoring program and other data gathering to en-
20 sure incidental take levels are not exceeded, and to
21 identify potential negative impacts and actions, if
22 any, necessary to mitigate impacts of the temporary
23 operational flexibility to species listed under the En-
24 dangered Species Act of 1973 (16 U.S.C. 1531–
25 1544).

1 (e) TECHNICAL ADJUSTMENTS TO TARGET PE-
2 RIOD.—If, before temporary operational flexibility has
3 been implemented on 56 cumulative days, the Secretaries
4 operate the Central Valley Project and the State Water
5 Project combined at levels that result in OMR flows less
6 negative than 7,500 cubic feet per second during days
7 of temporary operational flexibility as defined in sub-
8 section (c), the duration of such operation shall not be
9 counted toward the 56 cumulative days specified in sub-
10 section (a).

11 (f) EMERGENCY CONSULTATION; EFFECT ON RUN-
12 NING AVERAGES.—

13 (1) If necessary to implement the provisions of
14 this section, the Commissioner is authorized to take
15 any action necessary to implement this section for
16 up to 56 cumulative days. If during the 56 cumu-
17 lative days the Commissioner determines that ac-
18 tions necessary to implement this section will exceed
19 56 days, the Commissioner shall use the emergency
20 consultation procedures under the Endangered Spe-
21 cies Act of 1973 and its implementing regulation at
22 section 402.05 of title 50, Code of Federal Regula-
23 tions, to temporarily adjust the operating criteria
24 under the biological opinions—

1 (A) solely for extending beyond the 56 cu-
2 mulative days for additional days of temporary
3 operational flexibility—

4 (i) no more than necessary to achieve
5 the purposes of this section consistent with
6 the environmental protections in sub-
7 sections (d) and (e); and

8 (ii) including, as appropriate, adjust-
9 ments to ensure that the actual flow rates
10 during the periods of temporary oper-
11 ational flexibility do not count toward the
12 5-day and 14-day running averages of
13 tidally filtered daily OMR flow require-
14 ments under the biological opinions, or

15 (B) for other adjustments to operating cri-
16 teria or to take other urgent actions to address
17 water supply shortages for the least amount of
18 time or volume of diversion necessary as deter-
19 mined by the Commissioner.

20 (2) Following the conclusion of the 56 cumu-
21 lative days of temporary operational flexibility, or
22 the extended number of days covered by the emer-
23 gency consultation procedures, the Commissioner
24 shall not reinitiate consultation on these adjusted
25 operations, and no mitigation shall be required, if

1 the effects on listed fish species of these operations
 2 under this section remain within the range of those
 3 authorized under the Endangered Species Act of
 4 1973 (16 U.S.C. 1531 et seq.). If the Commissioner
 5 reinitiates consultation, no mitigation measures shall
 6 be required.

7 (g) LEVEL OF DETAIL REQUIRED FOR ANALYSIS.—
 8 In articulating the determinations required under this sec-
 9 tion, the Secretaries shall fully satisfy the requirements
 10 herein but shall not be expected to provide a greater level
 11 of supporting detail for the analysis than feasible to pro-
 12 vide within the short timeframe permitted for timely deci-
 13 sionmaking in response to changing conditions in the
 14 Delta.

15 **SEC. 308. EXPEDITING WATER TRANSFERS.**

16 (a) IN GENERAL.—Section 3405(a) of the Central
 17 Valley Project Improvement Act (Public Law 102–575;
 18 106 Stat. 4709(a)) is amended—

19 (1) by redesignating paragraphs (1) through
 20 (3) as paragraphs (4) through (6), respectively;

21 (2) in the matter preceding paragraph (4) (as
 22 so designated)—

23 (A) in the first sentence, by striking “In
 24 order to” and inserting the following:

25 “(1) IN GENERAL.—In order to”; and

1 (B) in the second sentence, by striking
2 “Except as provided herein” and inserting the
3 following:

4 “(3) TERMS.—Except as otherwise provided in
5 this section”;

6 (3) by inserting before paragraph (3) (as so
7 designated) the following:

8 “(2) EXPEDITED TRANSFER OF WATER.—The
9 Secretary shall take all necessary actions to facilitate
10 and expedite transfers of Central Valley Project
11 water in accordance with—

12 “(A) this Act;

13 “(B) any other applicable provision of the
14 reclamation laws; and

15 “(C) the National Environmental Policy
16 Act of 1969 (42 U.S.C. 4321 et seq.).”;

17 (4) in paragraph (4) (as so designated)—

18 (A) in subparagraph (A), by striking “to
19 combination” and inserting “or combination”;
20 and

21 (B) by striking “3405(a)(2) of this title”
22 each place it appears and inserting “(5)”;

23 (5) in paragraph (5) (as so designated), by add-
24 ing at the end the following:

1 “(E) The contracting district from which
 2 the water is coming, the agency, or the Sec-
 3 retary shall determine if a written transfer pro-
 4 posal is complete within 45 days after the date
 5 of submission of the proposal. If the contracting
 6 district or agency or the Secretary determines
 7 that the proposal is incomplete, the district or
 8 agency or the Secretary shall state with speci-
 9 ficity what must be added to or revised for the
 10 proposal to be complete.”; and

11 (6) in paragraph (6) (as so designated), by
 12 striking “3405(a)(1)(A)–(C), (E), (G), (H), (I), (L),
 13 and (M) of this title” and inserting “(A) through
 14 (C), (E), (G), (H), (I), (L), and (M) of paragraph
 15 (4)”.

16 (b) CONFORMING AMENDMENTS.—The Central Val-
 17 ley Project Improvement Act (Public Law 102–575) is
 18 amended—

19 (1) in section 3407(c)(1) (106 Stat. 4726), by
 20 striking “3405(a)(1)(C)” and inserting
 21 “3405(a)(4)(C)”; and

22 (2) in section 3408(i)(1) (106 Stat. 4729), by
 23 striking “3405(a)(1) (A) and (J) of this title” and
 24 inserting “subparagraphs (A) and (J) of section
 25 3405(a)(4)”.

1 **SEC. 309. ADDITIONAL EMERGENCY CONSULTATION.**

2 For adjustments to operating criteria other than
3 under section 308 of this Act or to take urgent actions
4 to address water supply shortages for the least amount
5 of time or volume of diversion necessary as determined
6 by the Commissioner, no mitigation measures shall be re-
7 quired during any year that the Sacramento Valley index
8 is 6.5 or lower, or at the request of the State of California,
9 and until two succeeding years following either of those
10 events have been completed where the final Sacramento
11 Valley Index is 7.8 or greater, and any mitigation meas-
12 ures imposed must be based on quantitative data and re-
13 quired only to the extent that such data demonstrates ac-
14 tual harm to species.

15 **SEC. 310. ADDITIONAL STORAGE AT NEW MELONES.**

16 The Commissioner of Reclamation is directed to work
17 with local water and irrigation districts in the Stanislaus
18 River Basin to ascertain the water storage made available
19 by the Draft Plan of Operations in New Melones Reservoir
20 (DRPO) for water conservation programs, conjunctive use
21 projects, water transfers, rescheduled project water and
22 other projects to maximize water storage and ensure the
23 beneficial use of the water resources in the Stanislaus
24 River Basin. All such programs and projects shall be im-
25 plemented according to all applicable laws and regulations.
26 The source of water for any such storage program at New

1 Melones Reservoir shall be made available under a valid
2 water right, consistent with the State of California water
3 transfer guidelines and any other applicable State water
4 law. The Commissioner shall inform the Congress within
5 18 months setting forth the amount of storage made avail-
6 able by the DRPO that has been put to use under this
7 program, including proposals received by Reclamation
8 from interested parties for the purpose of this section.

9 **SEC. 311. REGARDING THE OPERATION OF FOLSOM RES-**
10 **ERVOIR.**

11 The Secretary of the Interior, in collaboration with
12 the Sacramento Water Forum, shall expedite evaluation,
13 completion and implementation of the Modified Lower
14 American River Flow Management Standard developed by
15 the Water Forum in 2015 to improve water supply reli-
16 ability for Central Valley Project American River water
17 contractors and resource protection in the lower American
18 River during consecutive dry-years under current and fu-
19 ture demand and climate change conditions.

20 **SEC. 312. APPLICANTS.**

21 In the event that the Bureau of Reclamation or an-
22 other Federal agency initiates or reinitiates consultation
23 with the U.S. Fish and Wildlife Service or the National
24 Marine Fisheries Service under section 7(a)(2) of the En-
25 dangered Species Act of 1973 (16 U.S.C. 1536(a)(2)),

1 with respect to construction or operation of the Central
2 Valley Project and State Water Project, or any part there-
3 of, the State Water Project contractors and the Central
4 Valley Project contractors will be accorded all the rights
5 and responsibilities extended to applicants in the consulta-
6 tion process.

7 **SEC. 313. SAN JOAQUIN RIVER SETTLEMENT.**

8 (a) CALIFORNIA STATE LAW SATISFIED BY WARM
9 WATER FISHERY.—

10 (1) IN GENERAL.—Sections 5930 through 5948
11 of the California Fish and Game Code, and all appli-
12 cable Federal laws, including the San Joaquin River
13 Restoration Settlement Act (Public Law 111–11)
14 and the Stipulation of Settlement (Natural Re-
15 sources Defense Council, et al. v. Kirk Rodgers, et
16 al., Eastern District of California, No. Civ. S–88–
17 1658–LKK/GGH), shall be satisfied by the existence
18 of a warm water fishery in the San Joaquin River
19 below Friant Dam, but upstream of Gravelly Ford.

20 (2) DEFINITION OF WARM WATER FISHERY.—

21 For the purposes of this section, the term “warm
22 water fishery” means a water system that has an
23 environment suitable for species of fish other than
24 salmon (including all subspecies) and trout (includ-
25 ing all subspecies).

1 (b) REPEAL OF THE SAN JOAQUIN RIVER SETTLE-
2 MENT.—As of the date of enactment of this section, the
3 Secretary of the Interior shall cease any action to imple-
4 ment the San Joaquin River Restoration Settlement Act
5 (subtitle A of title X of Public Law 111–11) and the Stip-
6 ulation of Settlement (Natural Resources Defense Council,
7 et al. v. Kirk Rodgers, et al., Eastern District of Cali-
8 fornia, No. Civ. S–88–1658 LKK/GGH).

9 **SEC. 314. PROGRAM FOR WATER RESCHEDULING.**

10 By December 31, 2015, the Secretary of the Interior
11 shall develop and implement a program, including resched-
12 uling guidelines for Shasta and Folsom Reservoirs, to
13 allow existing Central Valley Project agricultural water
14 service contractors within the Sacramento River Water-
15 shed, and refuge service and municipal and industrial
16 water service contractors within the Sacramento River
17 Watershed and the American River Watershed to resched-
18 ule water, provided for under their Central Valley Project
19 contracts, from one year to the next; provided, that the
20 program is consistent with existing rescheduling guidelines
21 as utilized by the Bureau of Reclamation for rescheduling
22 water for Central Valley Project water service contractors
23 that are located South of the Delta.

TITLE IV—CALFED STORAGE FEASIBILITY STUDIES

SEC. 401. STUDIES.

The Secretary of the Interior, through the Commissioner of Reclamation, shall—

(1) complete the feasibility studies described in clauses (i)(I) and (ii)(II) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit such studies to the appropriate committees of the House of Representatives and the Senate not later than December 31, 2015;

(2) complete the feasibility studies described in clauses (i)(II) and (ii)(I) of section 103(d)(1)(A) of Public Law 108–361 and submit such studies to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2016;

(3) complete the feasibility study described in section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) and submit such study to the appropriate Committees of the House of Representatives and the Senate not later than December 31, 2017;

(4) provide a progress report on the status of the feasibility studies referred to in paragraphs (1) through (3) to the appropriate committees of the

1 House of Representatives and the Senate not later
2 than 90 days after the date of the enactment of this
3 Act and each 180 days thereafter until December
4 31, 2017, as applicable. The report shall include
5 timelines for study completion, draft environmental
6 impact statements, final environmental impact state-
7 ments, and Records of Decision; and

8 (5) in conducting any feasibility study under
9 this Act, the reclamation laws, the Central Valley
10 Project Improvement Act (title XXXIV of Public
11 Law 102–575; 106 Stat. 4706), the Fish and Wild-
12 life Coordination Act (16 U.S.C. 661 et seq.), the
13 Endangered Species Act of 1973 (16 U.S.C. 1531 et
14 seq.), and other applicable law, for the purposes any
15 determining feasibility the Secretary shall document,
16 delineate, and publish costs directly relating to the
17 engineering and construction of a water storage
18 project separately from the costs resulting from reg-
19 ulatory compliance or the construction of auxiliary
20 facilities necessary to achieve regulatory compliance.

21 **SEC. 402. TEMPERANCE FLAT.**

22 (a) DEFINITIONS.—For the purposes of this section:

23 (1) PROJECT.—The term “Project” means the
24 Temperance Flat Reservoir Project on the Upper
25 San Joaquin River.

1 (2) RMP.—The term “RMP” means the docu-
2 ment titled “Bakersfield Field Office, Record of De-
3 cision and Approved Resource Management Plan,”
4 dated December 2014.

5 (3) SECRETARY.—The term “Secretary” means
6 the Secretary of the Interior.

7 (b) APPLICABILITY OF RMP.—The RMP and find-
8 ings related thereto shall have no effect on or applicability
9 to the Secretary’s determination of feasibility of, or on any
10 findings or environmental review documents related to—

11 (1) the Project; or

12 (2) actions taken by the Secretary pursuant to
13 section 103(d)(1)(A)(ii)(II) of the Bay-Delta Au-
14 thorization Act (title I of Public Law 108–361).

15 (c) DUTIES OF SECRETARY UPON DETERMINATION
16 OF FEASIBILITY.—If the Secretary finds the Project to
17 be feasible, the Secretary shall manage the land rec-
18 ommended in the RMP for designation under the Wild and
19 Scenic Rivers Act (16 U.S.C. 1271 et seq.) in a manner
20 that does not impede any environmental reviews,
21 preconstruction, construction, or other activities of the
22 Project, regardless of whether or not the Secretary sub-
23 mits any official recommendation to Congress under the
24 Wild and Scenic Rivers Act.

1 (d) RESERVED WATER RIGHTS.—Effective Decem-
2 ber 22, 2014, there shall be no Federal reserved water
3 rights to any segment of the San Joaquin River related
4 to the Project as a result of any designation made under
5 the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).

6 **SEC. 403. CALFED STORAGE ACCOUNTABILITY.**

7 If the Secretary of the Interior fails to provide the
8 feasibility studies described in section 401 to the appro-
9 priate committees of the House of Representatives and the
10 Senate by the times prescribed, the amount made available
11 to the Policy and Administration Account of the Bureau
12 of Reclamation for the operation of the Washington, DC,
13 office shall be reduced by an amount of \$20,000 per day
14 and transferred to the Treasury for deficit reduction until
15 the feasibility reports are provided to Congress.

16 **SEC. 404. WATER STORAGE PROJECT CONSTRUCTION.**

17 (a) PARTNERSHIP AND AGREEMENTS.—The Sec-
18 retary, acting through the Commissioner of the Bureau
19 of Reclamation, may partner or enter into an agreement
20 on the water storage projects identified in section
21 103(d)(1) of the Water Supply Reliability and Environ-
22 mental Improvement Act (Public Law 108–361) (and Acts
23 supplemental and amendatory to the Act) with local joint
24 powers authorities formed pursuant to State law by irriga-
25 tion districts and other local water districts and local gov-

ernments within the applicable hydrologic region, to advance those projects.

(b) AUTHORIZATION FOR PROJECT.—If the Secretary determines a project described in section 402(a)(1) and (2) is feasible, the Secretary is authorized to carry out the project in a manner that is substantially in accordance with the recommended plan, and subject to the conditions described in the feasibility study, provided that no Federal funding shall be used to construct the project.

TITLE V—WATER RIGHTS PROTECTIONS

SEC. 501. PROTECTION FOR STATE WATER PROJECT CONTRACTORS.

(a) IMPLEMENTATION IMPACTS.—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.

(b) ADDITIONAL YIELD.—If, as a result of the application of this Act, the California Department of Fish and Wildlife—

(1) revokes the consistency determinations pursuant to California Fish and Game Code section

1 2080.1 that are applicable to the State Water
2 Project;

3 (2) amends or issues one or more new consist-
4 ency determinations pursuant to California Fish and
5 Game Code section 2080.1 in a manner that directly
6 or indirectly results in reduced water supply to the
7 State Water Project as compared with the water
8 supply available under the smelt biological opinion
9 and the salmonid biological opinion; or

10 (3) requires take authorization under section
11 2081 for operation of the State Water Project in a
12 manner that directly or indirectly results in reduced
13 water supply to the State Water Project as com-
14 pared with the water supply available under the
15 smelt biological opinion and the salmonid biological
16 opinion, and as a consequence of the Department's
17 action, Central Valley Project yield is greater than
18 it would have been absent the Department's actions,
19 then that additional yield shall be made available to
20 the State Water Project for delivery to State Water
21 Project contractors to offset losses resulting from
22 the Department's action.

23 (c) NOTIFICATION RELATED TO ENVIRONMENTAL
24 PROTECTIONS.—The Secretary of the Interior shall imme-
25 diately notify the Director of the California Department

1 of Fish and Wildlife in writing if the Secretary of the Inte-
2 rior determines that implementation of the smelt biological
3 opinion and the salmonid biological opinion consistent with
4 this Act reduces environmental protections for any species
5 covered by the opinions.

6 **SEC. 502. AREA OF ORIGIN PROTECTIONS.**

7 (a) IN GENERAL.—The Secretary of the Interior is
8 directed, in the operation of the Central Valley Project,
9 to adhere to California’s water rights laws governing water
10 rights priorities and to honor water rights senior to those
11 held by the United States for operation of the Central Val-
12 ley Project, regardless of the source of priority, including
13 any appropriative water rights initiated prior to December
14 19, 1914, as well as water rights and other priorities per-
15 fected or to be perfected pursuant to California Water
16 Code Part 2 of Division 2. Article 1.7 (commencing with
17 section 1215 of chapter 1 of part 2 of division 2, sections
18 10505, 10505.5, 11128, 11460, 11461, 11462, and
19 11463, and sections 12200 to 12220, inclusive).

20 (b) DIVERSIONS.—Any action undertaken by the Sec-
21 retaries pursuant to both this Act and section 7 of the
22 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
23 that requires that diversions from the Sacramento River
24 or the San Joaquin River watersheds upstream of the
25 Delta be bypassed shall not be undertaken in a manner

1 that alters the water rights priorities established by Cali-
2 fornia law.

3 (c) ENDANGERED SPECIES ACT.—Nothing in this
4 title alters the existing authorities provided to and obliga-
5 tions placed upon the Federal Government under the En-
6 dangered Species Act of 1973 (16 U.S.C. 1531 et seq.),
7 as amended.

8 (d) CONTRACTS.—With respect to individuals and en-
9 tities with water rights on the Sacramento River, the man-
10 dates of this section may be met, in whole or in part,
11 through a contract with the Secretary executed pursuant
12 to section 14 of Public Law 76–260; 53 Stat. 1187 (43
13 U.S.C. 389) that is in conformance with the Sacramento
14 River Settlement Contracts renewed by the Secretary in
15 2005.

16 **SEC. 503. NO REDIRECTED ADVERSE IMPACTS.**

17 (a) IN GENERAL.—The Secretary of the Interior shall
18 ensure that, except as otherwise provided for in a water
19 service or repayment contract, actions taken in compliance
20 with legal obligations imposed pursuant to or as a result
21 of this Act, including such actions under section 7 of the
22 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
23 and other applicable Federal and State laws, shall not di-
24 rectly or indirectly—

1 (1) result in the involuntary reduction of water
2 supply or fiscal impacts to individuals or districts
3 who receive water from either the State Water
4 Project or the United States under water rights set-
5 tlement contracts, exchange contracts, water service
6 contracts, repayment contracts, or water supply con-
7 tracts; or

8 (2) cause redirected adverse water supply or fis-
9 cal impacts to those within the Sacramento River
10 watershed, the San Joaquin River watershed or the
11 State Water Project service area.

12 (b) COSTS.—To the extent that costs are incurred
13 solely pursuant to or as a result of this Act and would
14 not otherwise have been incurred by any entity or public
15 or local agency or subdivision of the State of California,
16 such costs shall not be borne by any such entity, agency,
17 or subdivision of the State of California, unless such costs
18 are incurred on a voluntary basis.

19 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR
20 AMENDED.—Nothing in this Act shall modify or amend
21 the rights and obligations of the parties to any existing—

22 (1) water service, repayment, settlement, pur-
23 chase, or exchange contract with the United States,
24 including the obligation to satisfy exchange contracts

1 and settlement contracts prior to the allocation of
2 any other Central Valley Project water; or

3 (2) State Water Project water supply or settle-
4 ment contract with the State.

5 **SEC. 504. ALLOCATIONS FOR SACRAMENTO VALLEY CON-**
6 **TRACTORS.**

7 (a) ALLOCATIONS.—

8 (1) IN GENERAL.—Subject to paragraph (2)
9 and subsection (b), the Secretary of the Interior is
10 directed, in the operation of the Central Valley
11 Project, to allocate water provided for irrigation pur-
12 poses to existing Central Valley Project agricultural
13 water service contractors within the Sacramento
14 River Watershed in compliance with the following:

15 (A) Not less than 100 percent of their con-
16 tract quantities in a “Wet” year.

17 (B) Not less than 100 percent of their con-
18 tract quantities in an “Above Normal” year.

19 (C) Not less than 100 percent of their con-
20 tract quantities in a “Below Normal” year that
21 is preceded by an “Above Normal” or a “Wet”
22 year.

23 (D) Not less than 50 percent of their con-
24 tract quantities in a “Dry” year that is pre-

ceded by a “Below Normal,” an “Above Normal,” or a “Wet” year.

(E) In all other years not identified herein, the allocation percentage for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed shall not be less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, that nothing herein shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors.

(2) CONDITIONS.—The Secretary’s actions under paragraph (a) shall be subject to—

(A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River Settlement Contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;

1 (B) the United States obligation to make
2 a substitute supply of water available to the
3 San Joaquin River Exchange Contractors; and

4 (C) the Secretary's obligation to make
5 water available to managed wetlands pursuant
6 to section 3406(d) of the Central Valley Project
7 Improvement Act (Public Law 102–575).

8 (b) PROTECTION OF MUNICIPAL AND INDUSTRIAL
9 SUPPLIES.—Nothing in subsection (a) shall be deemed
10 to—

11 (1) modify any provision of a water service con-
12 tract that addresses municipal and industrial water
13 shortage policies of the Secretary;

14 (2) affect or limit the authority of the Secretary
15 to adopt or modify municipal and industrial water
16 shortage policies;

17 (3) affect or limit the authority of the Secretary
18 to implement municipal and industrial water short-
19 age policies; or

20 (4) affect allocations to Central Valley Project
21 municipal and industrial contractors pursuant to
22 such policies, including the utilization of such alloca-
23 tions as primary water sources for these contractors
24 for purposes of calculating municipal and industrial
25 water shortages.

1 (c) NO EFFECT ON ALLOCATIONS.—This section
2 shall not result in the involuntary reduction in contract
3 water allocations to individuals or entities with contracts
4 to receive water from the Friant Division.

5 (d) PROGRAM FOR WATER RESCHEDULING.—The
6 Secretary of the Interior shall develop and implement a
7 program, not later than 1 year after the date of the enact-
8 ment of this Act, to provide for the opportunity for exist-
9 ing Central Valley Project agricultural water service con-
10 tractors within the Sacramento River Watershed to re-
11 schedule water, provided for under their Central Valley
12 Project water service contracts, from one year to the next.

13 (e) DEFINITIONS.—In this section:

14 (1) The term “existing Central Valley Project
15 agricultural water service contractors within the
16 Sacramento River Watershed” means water service
17 contractors within the Shasta, Trinity, and Sac-
18 ramento River Divisions of the Central Valley
19 Project, that have a water service contract in effect,
20 on the date of the enactment of this section, that
21 provides water for irrigation.

22 (2) The year type terms used in subsection (a)
23 have the meaning given those year types in the Sac-
24 ramento Valley Water Year Type (40–30–30) Index.

1 **SEC. 505. EFFECT ON EXISTING OBLIGATIONS.**

2 Nothing in this Act preempts or modifies any existing
3 obligation of the United States under Federal reclamation
4 law to operate the Central Valley Project in conformity
5 with State law, including established water rights prior-
6 ities.

7 **TITLE VI—MISCELLANEOUS**

8 **SEC. 601. AUTHORIZED SERVICE AREA.**

9 (a) IN GENERAL.—The authorized service area of the
10 Central Valley Project authorized under the Central Valley
11 Project Improvement Act (Public Law 102–575; 106 Stat.
12 4706) shall include the area within the boundaries of the
13 Kettleman City Community Services District, California,
14 as in existence on the date of enactment of this Act.

15 (b) LONG-TERM CONTRACT.—

16 (1) IN GENERAL.—Notwithstanding the Central
17 Valley Project Improvement Act (Public Law 102–
18 575; 106 Stat. 4706) and subject to paragraph (2),
19 the Secretary of the Interior, in accordance with the
20 Federal reclamation laws, shall enter into a long-
21 term contract with the Kettleman City Community
22 Services District, California, under terms and condi-
23 tions mutually agreeable to the parties, for the deliv-
24 ery of up to 900 acre-feet of Central Valley Project
25 water for municipal and industrial use.

1 (2) LIMITATION.—Central Valley Project water
 2 deliveries authorized under the contract entered into
 3 under paragraph (1) shall be limited to the minimal
 4 quantity necessary to meet the immediate needs of
 5 the Kettleman City Community Services District,
 6 California, in the event that local supplies or State
 7 Water Project allocations are insufficient to meet
 8 those needs.

9 (c) PERMIT.—The Secretary shall apply for a permit
 10 with the State for a joint place of use for water deliveries
 11 authorized under the contract entered into under sub-
 12 section (b) with respect to the expanded service area under
 13 subsection (a), consistent with State law.

14 (d) ADDITIONAL COSTS.—If any additional infra-
 15 structure, water treatment, or related costs are needed to
 16 implement this section, those costs shall be the responsi-
 17 bility of the non-Federal entity.

18 **SEC. 602. OVERSIGHT BOARD FOR RESTORATION FUND.**

19 (a) PLAN; ADVISORY BOARD.—Section 3407 of the
 20 Central Valley Project Improvement Act (Public Law
 21 102–575; 106 Stat. 4726) is amended by adding at the
 22 end the following:

23 “(g) PLAN ON EXPENDITURE OF FUNDS.—

24 “(1) IN GENERAL.—For each fiscal year, the
 25 Secretary, in consultation with the Advisory Board,

1 shall submit to Congress a plan for the expenditure
2 of all of the funds deposited into the Restoration
3 Fund during the preceding fiscal year.

4 “(2) CONTENTS.—The plan shall include an
5 analysis of the cost-effectiveness of each expenditure.

6 “(h) ADVISORY BOARD.—

7 “(1) ESTABLISHMENT.—There is established
8 the Restoration Fund Advisory Board (referred to in
9 this section as the ‘Advisory Board’), which shall be
10 composed of 11 members appointed by the Sec-
11 retary.

12 “(2) MEMBERSHIP.—

13 “(A) IN GENERAL.—The Secretary shall
14 appoint members to the Advisory Board that
15 represent the various Central Valley Project
16 stakeholders, of whom—

17 “(i) 4 members shall be agricultural
18 users of the Central Valley Project, includ-
19 ing at least one agricultural user from
20 north-of-the-Delta and one agricultural
21 user from south-of-the-Delta;

22 “(ii) 2 members shall be municipal
23 and industrial users of the Central Valley
24 Project, including one municipal and in-
25 dustrial user from north-of-the-Delta and

1 one municipal and industrial user from
2 south-of-the-Delta;

3 “(iii) 3 members shall be power con-
4 tractors of the Central Valley Project, in-
5 cluding at least one power contractor from
6 north-of-the-Delta and from south-of-the-
7 Delta;

8 “(iv) 1 member shall be a representa-
9 tive of a Federal national wildlife refuge
10 that contracts for Central Valley Project
11 water supplies with the Bureau of Rec-
12 lamation; and

13 “(v) 1 member shall have expertise in
14 the economic impacts of the changes to
15 water operations.

16 “(B) OBSERVER.—The Secretary and the
17 Secretary of Commerce may each designate a
18 representative to act as an observer of the Advi-
19 sory Board.

20 “(C) CHAIRMAN.—The Secretary shall ap-
21 point 1 of the members described in subpara-
22 graph (A) to serve as Chairman of the Advisory
23 Board.

24 “(3) TERMS.—The term of each member of the
25 Advisory Board shall be 4 years.

1 “(4) DATE OF APPOINTMENTS.—The appoint-
2 ment of a member of the Panel shall be made not
3 later than—

4 “(A) the date that is 120 days after the
5 date of enactment of this Act; or

6 “(B) in the case of a vacancy on the Panel
7 described in subsection (c)(2), the date that is
8 120 days after the date on which the vacancy
9 occurs.

10 “(5) VACANCIES.—

11 “(A) IN GENERAL.—A vacancy on the
12 Panel shall be filled in the manner in which the
13 original appointment was made and shall be
14 subject to any conditions that applied with re-
15 spect to the original appointment.

16 “(B) FILLING UNEXPIRED TERM.—An in-
17 dividual chosen to fill a vacancy shall be ap-
18 pointed for the unexpired term of the member
19 replaced.

20 “(C) EXPIRATION OF TERMS.—The term
21 of any member shall not expire before the date
22 on which the successor of the member takes of-
23 fice.

1 “(6) REMOVAL.—A member of the Panel may
2 be removed from office by the Secretary of the Inte-
3 rior.

4 “(7) FEDERAL ADVISORY COMMITTEE ACT.—
5 The Panel shall not be subject to the requirements
6 of the Federal Advisory Committee Act.

7 “(8) DUTIES.—The duties of the Advisory
8 Board are—

9 “(A) to meet not less frequently than semi-
10 annually to develop and make recommendations
11 to the Secretary regarding priorities and spend-
12 ing levels on projects and programs carried out
13 under this title;

14 “(B) to ensure that any advice given or
15 recommendation made by the Advisory Board
16 reflects the independent judgment of the Advi-
17 sory Board;

18 “(C) not later than December 31, 2015,
19 and annually thereafter, to submit to the Sec-
20 retary and Congress the recommendations
21 under subparagraph (A); and

22 “(D) not later than December 31, 2015,
23 and biennially thereafter, to submit to Congress
24 details of the progress made in achieving the
25 actions required under section 3406.

1 “(9) ADMINISTRATION.—With the consent of
2 the appropriate agency head, the Advisory Board
3 may use the facilities and services of any Federal
4 agency.

5 “(10) COOPERATION AND ASSISTANCE.—

6 “(A) PROVISION OF INFORMATION.—Upon
7 request of the Panel Chair for information or
8 assistance to facilitate carrying out this section,
9 the Secretary of the Interior shall promptly pro-
10 vide such information, unless otherwise prohib-
11 ited by law.

12 “(B) SPACE AND ASSISTANCE.—The Sec-
13 retary of the Interior shall provide the Panel
14 with appropriate and adequate office space, to-
15 gether with such equipment, office supplies, and
16 communications facilities and services as may
17 be necessary for the operation of the Panel, and
18 shall provide necessary maintenance services for
19 such offices and the equipment and facilities lo-
20 cated therein.”.

21 **SEC. 603. WATER SUPPLY ACCOUNTING.**

22 (a) IN GENERAL.—All Central Valley Project water,
23 except Central Valley Project water released pursuant to
24 U.S. Department of the Interior Record of Decision, Trin-
25 ity River Mainstem Fishery Restoration Final Environ-

1 mental Impact Statement/Environmental Impact Report
2 dated the December 2000 used to implement an action
3 undertaken for a fishery beneficial purpose that was not
4 imposed by terms and conditions existing in licenses, per-
5 mits, and other agreements pertaining to the Central Val-
6 ley Project under applicable State or Federal law existing
7 on October 30, 1992, shall be credited to the quantity of
8 Central Valley Project yield dedicated and managed under
9 this section; provided, that nothing herein shall affect the
10 Secretary of the Interior's duty to comply with any other-
11 wise lawful requirement imposed on operations of the Cen-
12 tral Valley Project under any provision of Federal or State
13 law.

14 (b) RECLAMATION POLICIES AND ALLOCATIONS.—
15 Reclamation policies and allocations shall not be based
16 upon any premise or assumption that Central Valley
17 Project contract supplies are supplemental or secondary
18 to any other contractor source of supply.

19 **SEC. 604. IMPLEMENTATION OF WATER REPLACEMENT**
20 **PLAN.**

21 (a) IN GENERAL.—Not later than October 1, 2016,
22 the Secretary of the Interior shall update and implement
23 the plan required by section 3408(j) of title XXXIV of
24 Public Law 102–575. The Secretary shall provide reports
25 to the Congress annually describing the progress of imple-

1 mentioning the plan required by section 3408(j) of title
2 XXXIV of Public Law 102–575.

3 (b) FAILURE TO UPDATE AND IMPLEMENT PLAN.—

4 If the Secretary fails to update and implement the plan
5 required in subsection (a) within 180 days of enactment
6 of this Act, the amount made available to the Policy and
7 Administration Account of the Bureau of Reclamation for
8 the operation of the Washington, DC, office shall be re-
9 duced by an amount of \$20,000 per day and transferred
10 to the Treasury for deficit reduction until the feasibility
11 reports are provided to Congress.

12 (c) POTENTIAL AMENDMENT.—If the plan required
13 in subsection (a) has not increased the Central Valley
14 Project yield by 800,000 acre-feet within 5 years after the
15 enactment of this Act, then section 3406 of the Central
16 Valley Project Improvement Act (title XXXIV of Public
17 Law 102–575) is amended as follows:

18 (1) In subsection (b)—

19 (A) by amending paragraph (2)(C) to read:

20 “(C) If by March 15, 2018, and any year
21 thereafter the quantity of Central Valley
22 Project water forecasted to be made available to
23 all water service or repayment contractors of
24 the Central Valley Project is below 50 percent
25 of the total quantity of water to be made avail-

1 able under said contracts, the quantity of Cen-
 2 tral Valley Project yield dedicated and managed
 3 for that year under this paragraph shall be re-
 4 duced by 25 percent.”.

5 **SEC. 605. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

6 After the date of the enactment of this title, and re-
 7 gardless of the date of listing, the Secretaries of the Inte-
 8 rior and Commerce shall not distinguish between natural-
 9 spawned and hatchery-spawned or otherwise artificially
 10 propagated strains of a species in making any determina-
 11 tion under the Endangered Species Act of 1973 (16
 12 U.S.C. 1531 et seq.) that relates to any anadromous or
 13 pelagic fish species that resides for all or a portion of its
 14 life in the Sacramento-San Joaquin Delta or rivers tribu-
 15 tary thereto.

16 **SEC. 606. TRANSFER THE NEW MELONES UNIT, CENTRAL**
 17 **VALLEY PROJECT TO INTERESTED PRO-**
 18 **VIDERS.**

19 (a) DEFINITIONS.—For the purposes of this Act, the
 20 following terms apply:

21 (1) INTERESTED LOCAL WATER AND POWER
 22 PROVIDERS.—The term “interested local water and
 23 power providers” includes the Calaveras County
 24 Water District, Calaveras Public Power Agency,
 25 Central San Joaquin Water Conservation District,

1 Oakdale Irrigation District, Stockton East Water
2 District, South San Joaquin Irrigation District,
3 Tuolumne Utilities District, Tuolumne Public Power
4 Agency, and Union Public Utilities District.

5 (2) NEW MELONES UNIT, CENTRAL VALLEY
6 PROJECT.—The term “New Melones Unit, Central
7 Valley Project” means all Federal reclamation
8 projects located within or diverting water from or to
9 the watershed of the Stanislaus and San Joaquin
10 rivers and their tributaries as authorized by the Act
11 of August 26, 1937 (50 Stat. 850), and all Acts
12 amendatory or supplemental thereto, including the
13 Act of October 23, 1962 (76 Stat. 1173).

14 (3) SECRETARY.—The term “Secretary” means
15 the Secretary of the Interior.

16 (b) NEGOTIATIONS.—Notwithstanding any other pro-
17 vision of law, not later than 180 days after the date of
18 the enactment of this Act, the Secretary shall enter into
19 negotiations with interested local water and power pro-
20 viders for the transfer ownership, control, and operation
21 of the New Melones Unit, Central Valley Project to inter-
22 ested local water and power providers within the State of
23 California.

24 (c) TRANSFER.—The Secretary shall transfer the
25 New Melones Unit, Central Valley Project in accordance

1 with an agreement reached pursuant to negotiations con-
2 ducted under subsection (b).

3 (d) NOTIFICATION.—Not later than 360 days after
4 the date of the enactment of this Act, and every 6 months
5 thereafter, the Secretary shall notify the appropriate com-
6 mittees of the House of Representatives and the Senate—

7 (1) if an agreement is reached pursuant to ne-
8 gotiations conducted under section 1(b), the terms of
9 that agreement;

10 (2) of the status of formal discussions with in-
11 terested local water and power providers for the
12 transfer of ownership, control, and operation of the
13 New Melones Unit, Central Valley Project to inter-
14 ested local water and power providers;

15 (3) of all unresolved issues that are preventing
16 execution of an agreement for the transfer of owner-
17 ship, control, and operation of the New Melones
18 Unit, Central Valley Project to interested local water
19 and power providers;

20 (4) on analysis and review of studies, reports,
21 discussions, hearing transcripts, negotiations, and
22 other information about past and present formal dis-
23 cussions that—

24 (A) have a serious impact on the progress
25 of the formal discussions;

1 (B) explain or provide information about
2 the issues that prevent progress or finalization
3 of formal discussions; or

4 (C) are, in whole or in part, preventing
5 execution of an agreement for the transfer; and

6 (5) of any actions the Secretary recommends
7 that the United States should take to finalize an
8 agreement for that transfer.

9 **SEC. 607. BASIN STUDIES.**

10 (a) **AUTHORIZED STUDIES.**—The Secretary is au-
11 thorized and directed to expand opportunities and expedite
12 completion of assessments under section 9503(b) of the
13 SECURE Water Act, with non-Federal partners, of indi-
14 vidual sub-basins and watersheds within major Reclama-
15 tion river basins; and shall ensure timely decision and ex-
16 pedited implementation of adaptation and mitigation
17 strategies developed through the special study process.

18 (b) **FUNDING.**—

19 (1) **IN GENERAL.**—The non-Federal partners
20 shall be responsible for 100 percent of the cost of
21 the special studies.

22 (2) **CONTRIBUTED FUNDS.**—The Secretary may
23 accept and use contributions of funds from the non-
24 Federal partners to carry out activities under the
25 special studies.

1 **SEC. 608. OPERATIONS OF THE TRINITY RIVER DIVISION.**

2 The Secretary of the Interior, in the operation of the
3 Trinity River Division of the Central Valley Project, shall
4 not make releases from Lewiston Dam in excess of the
5 volume for each water-year type required by the U.S. De-
6 partment of the Interior Record of Decision, Trinity River
7 Mainstem Fishery Restoration Final Environmental Im-
8 pact Statement/Environmental Impact Report dated De-
9 cember 2000.

10 (1) A maximum of 369,000 acre-feet in a
11 “critically dry” year.

12 (2) A maximum of 453,000 acre-feet in a “dry”
13 year.

14 (3) A maximum of 647,000 acre-feet in a “nor-
15 mal” year.

16 (4) A maximum of 701,000 acre-feet in a “wet”
17 year.

18 (5) A maximum of 815,000 acre-feet in an “ex-
19 tremely wet” year.

20 **SEC. 609. AMENDMENT TO PURPOSES.**

21 Section 3402 of the Central Valley Project Improve-
22 ment Act (106 Stat. 4706) is amended—

23 (1) in subsection (f), by striking the period at
24 the end; and

25 (2) by adding at the end the following:

1 “(g) to ensure that water dedicated to fish and wild-
 2 life purposes by this title is replaced and provided to Cen-
 3 tral Valley Project water contractors by December 31,
 4 2018, at the lowest cost reasonably achievable; and

5 “(h) to facilitate and expedite water transfers in ac-
 6 cordance with this Act.”.

7 **SEC. 610. AMENDMENT TO DEFINITION.**

8 Section 3403 of the Central Valley Project Improve-
 9 ment Act (106 Stat. 4707) is amended—

10 (1) by amending subsection (a) to read as fol-
 11 lows:

12 “(a) the term ‘anadromous fish’ means those native
 13 stocks of salmon (including steelhead) and sturgeon that,
 14 as of October 30, 1992, were present in the Sacramento
 15 and San Joaquin Rivers and their tributaries and ascend
 16 those rivers and their tributaries to reproduce after matur-
 17 ing in San Francisco Bay or the Pacific Ocean;”;

18 (2) in subsection (l), by striking “and,”;

19 (3) in subsection (m), by striking the period
 20 and inserting “; and”; and

21 (4) by adding at the end the following:

22 “(n) the term ‘reasonable flow’ means water flows ca-
 23 pable of being maintained taking into account competing
 24 consumptive uses of water and economic, environmental,
 25 and social factors.”.

1 **TITLE VII—WATER SUPPLY**
2 **PERMITTING ACT**

3 **SEC. 701. SHORT TITLE.**

4 This title may be cited as the “Water Supply Permit-
5 ting Coordination Act”.

6 **SEC. 702. DEFINITIONS.**

7 In this title:

8 (1) SECRETARY.—The term “Secretary” means
9 the Secretary of the Interior.

10 (2) BUREAU.—The term “Bureau” means the
11 Bureau of Reclamation.

12 (3) QUALIFYING PROJECTS.—The term “quali-
13 fying projects” means new surface water storage
14 projects in the States covered under the Act of June
15 17, 1902 (32 Stat. 388, chapter 1093), and Acts
16 supplemental to and amendatory of that Act (43
17 U.S.C. 371 et seq.) constructed on lands adminis-
18 tered by the Department of the Interior or the De-
19 partment of Agriculture, exclusive of any easement,
20 right-of-way, lease, or any private holding.

21 (4) COOPERATING AGENCIES.—The term “co-
22 operating agency” means a Federal agency with ju-
23 risdiction over a review, analysis, opinion, statement,
24 permit, license, or other approval or decision re-
25 quired for a qualifying project under applicable Fed-

1 eral laws and regulations, or a State agency subject
2 to section 703(c).

3 **SEC. 703. ESTABLISHMENT OF LEAD AGENCY AND COOPER-**
4 **ATING AGENCIES.**

5 (a) ESTABLISHMENT OF LEAD AGENCY.—The Bu-
6 reau of Reclamation is established as the lead agency for
7 purposes of coordinating all reviews, analyses, opinions,
8 statements, permits, licenses, or other approvals or deci-
9 sions required under Federal law to construct qualifying
10 projects.

11 (b) IDENTIFICATION AND ESTABLISHMENT OF CO-
12 OPERATING AGENCIES.—The Commissioner of the Bureau
13 shall—

14 (1) identify, as early as practicable upon receipt
15 of an application for a qualifying project, any Fed-
16 eral agency that may have jurisdiction over a review,
17 analysis, opinion, statement, permit, license, ap-
18 proval, or decision required for a qualifying project
19 under applicable Federal laws and regulations; and

20 (2) notify any such agency, within a reasonable
21 timeframe, that the agency has been designated as
22 a cooperating agency in regards to the qualifying
23 project unless that agency responds to the Bureau in
24 writing, within a timeframe set forth by the Bureau,
25 notifying the Bureau that the agency—

1 (A) has no jurisdiction or authority with
2 respect to the qualifying project;

3 (B) has no expertise or information rel-
4 evant to the qualifying project or any review,
5 analysis, opinion, statement, permit, license, or
6 other approval or decision associated therewith;
7 or

8 (C) does not intend to submit comments
9 on the qualifying project or conduct any review
10 of such a project or make any decision with re-
11 spect to such project in a manner other than in
12 cooperation with the Bureau.

13 (c) STATE AUTHORITY.—A State in which a quali-
14 fying project is being considered may choose, consistent
15 with State law—

16 (1) to participate as a cooperating agency; and

17 (2) to make subject to the processes of this title
18 all State agencies that—

19 (A) have jurisdiction over the qualifying
20 project;

21 (B) are required to conduct or issue a re-
22 view, analysis, or opinion for the qualifying
23 project; or

1 (C) are required to make a determination
2 on issuing a permit, license, or approval for the
3 qualifying project.

4 **SEC. 704. BUREAU RESPONSIBILITIES.**

5 (a) IN GENERAL.—The principal responsibilities of
6 the Bureau under this title are to—

7 (1) serve as the point of contact for applicants,
8 State agencies, Indian tribes, and others regarding
9 proposed qualifying projects;

10 (2) coordinate preparation of unified environ-
11 mental documentation that will serve as the basis for
12 all Federal decisions necessary to authorize the use
13 of Federal lands for qualifying projects; and

14 (3) coordinate all Federal agency reviews nec-
15 essary for project development and construction of
16 qualifying projects.

17 (b) COORDINATION PROCESS.—The Bureau shall
18 have the following coordination responsibilities:

19 (1) PRE-APPLICATION COORDINATION.—Notify
20 cooperating agencies of proposed qualifying projects
21 not later than 30 days after receipt of a proposal
22 and facilitate a preapplication meeting for prospec-
23 tive applicants, relevant Federal and State agencies,
24 and Indian tribes to—

1 (A) explain applicable processes, data re-
2 quirements, and applicant submissions nec-
3 essary to complete the required Federal agency
4 reviews within the timeframe established; and

5 (B) establish the schedule for the quali-
6 fying project.

7 (2) CONSULTATION WITH COOPERATING AGEN-
8 CIES.—Consult with the cooperating agencies
9 throughout the Federal agency review process, iden-
10 tify and obtain relevant data in a timely manner,
11 and set necessary deadlines for cooperating agencies.

12 (3) SCHEDULE.—Work with the qualifying
13 project applicant and cooperating agencies to estab-
14 lish a project schedule. In establishing the schedule,
15 the Bureau shall consider, among other factors—

16 (A) the responsibilities of cooperating
17 agencies under applicable laws and regulations;

18 (B) the resources available to the cooper-
19 ating agencies and the non-Federal qualifying
20 project sponsor, as applicable;

21 (C) the overall size and complexity of the
22 qualifying project;

23 (D) the overall schedule for and cost of the
24 qualifying project; and

1 (E) the sensitivity of the natural and his-
2 toric resources that may be affected by the
3 qualifying project.

4 (4) ENVIRONMENTAL COMPLIANCE.—Prepare a
5 unified environmental review document for each
6 qualifying project application, incorporating a single
7 environmental record on which all cooperating agen-
8 cies with authority to issue approvals for a given
9 qualifying project shall base project approval deci-
10 sions. Help ensure that cooperating agencies make
11 necessary decisions, within their respective authori-
12 ties, regarding Federal approvals in accordance with
13 the following timelines:

14 (A) Not later than one year after accept-
15 ance of a completed project application when an
16 environmental assessment and finding of no sig-
17 nificant impact is determined to be the appro-
18 priate level of review under the National Envi-
19 ronmental Policy Act of 1969 (42 U.S.C. 4321
20 et seq.).

21 (B) Not later than one year and 30 days
22 after the close of the public comment period for
23 a draft environmental impact statement under
24 the National Environmental Policy Act of 1969
25 (42 U.S.C. 4321 et seq.), when an environ-

1 mental impact statement is required under the
2 same.

3 (5) CONSOLIDATED ADMINISTRATIVE
4 RECORD.—Maintain a consolidated administrative
5 record of the information assembled and used by the
6 cooperating agencies as the basis for agency deci-
7 sions.

8 (6) PROJECT DATA RECORDS.—To the extent
9 practicable and consistent with Federal law, ensure
10 that all project data is submitted and maintained in
11 generally accessible electronic format, compile, and
12 where authorized under existing law, make available
13 such project data to cooperating agencies, the quali-
14 fying project applicant, and to the public.

15 (7) PROJECT MANAGER.—Appoint a project
16 manager for each qualifying project. The project
17 manager shall have authority to oversee the project
18 and to facilitate the issuance of the relevant final
19 authorizing documents, and shall be responsible for
20 ensuring fulfillment of all Bureau responsibilities set
21 forth in this section and all cooperating agency re-
22 sponsibilities under section 705.

23 **SEC. 705. COOPERATING AGENCY RESPONSIBILITIES.**

24 (a) ADHERENCE TO BUREAU SCHEDULE.—Upon no-
25 tification of an application for a qualifying project, all co-

1 operating agencies shall submit to the Bureau a timeframe
2 under which the cooperating agency reasonably considers
3 it will be able to complete its authorizing responsibilities.
4 The Bureau shall use the timeframe submitted under this
5 subsection to establish the project schedule under section
6 704, and the cooperating agencies shall adhere to the
7 project schedule established by the Bureau.

8 (b) ENVIRONMENTAL RECORD.—Cooperating agen-
9 cies shall submit to the Bureau all environmental review
10 material produced or compiled in the course of carrying
11 out activities required under Federal law consistent with
12 the project schedule established by the Bureau.

13 (c) DATA SUBMISSION.—To the extent practicable
14 and consistent with Federal law, the cooperating agencies
15 shall submit all relevant project data to the Bureau in a
16 generally accessible electronic format subject to the project
17 schedule set forth by the Bureau.

18 **SEC. 706. FUNDING TO PROCESS PERMITS.**

19 (a) IN GENERAL.—The Secretary, after public notice
20 in accordance with the Administrative Procedures Act (5
21 U.S.C. 553), may accept and expend funds contributed by
22 a non-Federal public entity to expedite the evaluation of
23 a permit of that entity related to a qualifying project.

24 (b) EFFECT ON PERMITTING.—

1 (1) IN GENERAL.—In carrying out this section,
2 the Secretary shall ensure that the use of funds ac-
3 cepted under subsection (a) will not impact impartial
4 decisionmaking with respect to permits, either sub-
5 stantively or procedurally.

6 (2) EVALUATION OF PERMITS.—In carrying out
7 this section, the Secretary shall ensure that the eval-
8 uation of permits carried out using funds accepted
9 under this section shall—

10 (A) be reviewed by the Regional Director
11 of the Bureau of Reclamation, or the Regional
12 Director’s designee, of the region in which the
13 qualifying project or activity is located; and

14 (B) use the same procedures for decisions
15 that would otherwise be required for the evalua-
16 tion of permits for similar projects or activities
17 not carried out using funds authorized under
18 this section.

19 (3) IMPARTIAL DECISIONMAKING.—In carrying
20 out this section, the Secretary and the cooperating
21 agencies receiving funds under this section for quali-
22 fying projects shall ensure that the use of the funds
23 accepted under this section for such projects shall
24 not—

1 (A) impact impartial decisionmaking with
 2 respect to the issuance of permits, either sub-
 3 stantively or procedurally; or

4 (B) diminish, modify, or otherwise affect
 5 the statutory or regulatory authorities of such
 6 agencies.

7 (c) LIMITATION ON USE OF FUNDS.—None of the
 8 funds accepted under this section shall be used to carry
 9 out a review of the evaluation of permits required under
 10 subsection (b)(2)(A).

11 (d) PUBLIC AVAILABILITY.—The Secretary shall en-
 12 sure that all final permit decisions carried out using funds
 13 authorized under this section are made available to the
 14 public, including on the Internet.

15 **TITLE VIII—BUREAU OF REC-** 16 **LAMATION PROJECT STREAM-** 17 **LINING**

18 **SEC. 801. SHORT TITLE.**

19 This title may be cited as the “Bureau of Reclama-
 20 tion Project Streamlining Act”.

21 **SEC. 802. DEFINITIONS.**

22 In this title:

23 (1) ENVIRONMENTAL IMPACT STATEMENT.—

24 The term “environmental impact statement” means
 25 the detailed statement of environmental impacts of

1 a project required to be prepared pursuant to the
2 National Environmental Policy Act of 1969 (42
3 U.S.C. 4321 et seq.).

4 (2) ENVIRONMENTAL REVIEW PROCESS.—

5 (A) IN GENERAL.—The term “environ-
6 mental review process” means the process of
7 preparing an environmental impact statement,
8 environmental assessment, categorical exclusion,
9 or other document under the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4321 et
11 seq.) for a project study.

12 (B) INCLUSIONS.—The term “environ-
13 mental review process” includes the process for
14 and completion of any environmental permit,
15 approval, review, or study required for a project
16 study under any Federal law other than the
17 National Environmental Policy Act of 1969 (42
18 U.S.C. 4321 et seq.).

19 (3) FEDERAL JURISDICTIONAL AGENCY.—The
20 term “Federal jurisdictional agency” means a Fed-
21 eral agency with jurisdiction delegated by law, regu-
22 lation, order, or otherwise over a review, analysis,
23 opinion, statement, permit, license, or other approval
24 or decision required for a project study under appli-
25 cable Federal laws (including regulations).

1 (4) FEDERAL LEAD AGENCY.—The term “Fed-
2 eral lead agency” means the Bureau of Reclamation.

3 (5) PROJECT.—The term “project” means a
4 surface water project, a project under the purview of
5 title XVI of Public Law 102–575, or a rural water
6 supply project investigated under Public Law 109–
7 451 to be carried out, funded or operated in whole
8 or in part by the Secretary pursuant to the Act of
9 June 17, 1902 (32 Stat. 388, chapter 1093), and
10 Acts supplemental to and amendatory of that Act
11 (43 U.S.C. 371 et seq.).

12 (6) PROJECT SPONSOR.—The term “project
13 sponsor” means a State, regional, or local authority
14 or instrumentality or other qualifying entity, such as
15 a water conservation district, irrigation district,
16 water conservancy district, joint powers authority,
17 mutual water company, canal company, rural water
18 district or association, or any other entity that has
19 the capacity to contract with the United States
20 under Federal reclamation law.

21 (7) PROJECT STUDY.—The term “project
22 study” means a feasibility study for a project carried
23 out pursuant to the Act of June 17, 1902 (32 Stat.
24 388, chapter 1093), and Acts supplemental to and
25 amendatory of that Act (43 U.S.C. 371 et seq.).

1 (8) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (9) SURFACE WATER STORAGE.—The term
4 “surface water storage” means any surface water
5 reservoir or impoundment that would be owned,
6 funded or operated in whole or in part by the Bu-
7 reau of Reclamation or that would be integrated into
8 a larger system owned, operated or administered in
9 whole or in part by the Bureau of Reclamation.

10 **SEC. 803. ACCELERATION OF STUDIES.**

11 (a) IN GENERAL.—To the extent practicable, a
12 project study initiated by the Secretary, after the date of
13 enactment of this Act, under the Reclamation Act of 1902
14 (32 Stat. 388), and all Acts amendatory thereof or supple-
15 mentary thereto, shall—

16 (1) result in the completion of a final feasibility
17 report not later than 3 years after the date of initi-
18 ation;

19 (2) have a maximum Federal cost of
20 \$3,000,000; and

21 (3) ensure that personnel from the local project
22 area, region, and headquarters levels of the Bureau
23 of Reclamation concurrently conduct the review re-
24 quired under this section.

1 (b) EXTENSION.—If the Secretary determines that a
2 project study described in subsection (a) will not be con-
3 ducted in accordance with subsection (a), the Secretary,
4 not later than 30 days after the date of making the deter-
5 mination, shall—

6 (1) prepare an updated project study schedule
7 and cost estimate;

8 (2) notify the non-Federal project cost-sharing
9 partner that the project study has been delayed; and

10 (3) provide written notice to the Committee on
11 Natural Resources of the House of Representatives
12 and the Committee on Energy and Natural Re-
13 sources of the Senate as to the reasons the require-
14 ments of subsection (a) are not attainable.

15 (c) EXCEPTION.—

16 (1) IN GENERAL.—Notwithstanding the re-
17 quirements of subsection (a), the Secretary may ex-
18 tend the timeline of a project study by a period not
19 to exceed 3 years, if the Secretary determines that
20 the project study is too complex to comply with the
21 requirements of subsection (a).

22 (2) FACTORS.—In making a determination that
23 a study is too complex to comply with the require-
24 ments of subsection (a), the Secretary shall con-
25 sider—

1 (A) the type, size, location, scope, and
2 overall cost of the project;

3 (B) whether the project will use any inno-
4 vative design or construction techniques;

5 (C) whether the project will require signifi-
6 cant action by other Federal, State, or local
7 agencies;

8 (D) whether there is significant public dis-
9 pute as to the nature or effects of the project;
10 and

11 (E) whether there is significant public dis-
12 pute as to the economic or environmental costs
13 or benefits of the project.

14 (3) NOTIFICATION.—Each time the Secretary
15 makes a determination under this subsection, the
16 Secretary shall provide written notice to the Com-
17 mittee on Natural Resources of the House of Rep-
18 resentatives and the Committee on Energy and Nat-
19 ural Resources of the Senate as to the results of
20 that determination, including an identification of the
21 specific one or more factors used in making the de-
22 termination that the project is complex.

23 (4) LIMITATION.—The Secretary shall not ex-
24 tend the timeline for a project study for a period of
25 more than 7 years, and any project study that is not

1 completed before that date shall no longer be au-
2 thorized.

3 (d) REVIEWS.—Not later than 90 days after the date
4 of the initiation of a project study described in subsection
5 (a), the Secretary shall—

6 (1) take all steps necessary to initiate the proc-
7 ess for completing federally mandated reviews that
8 the Secretary is required to complete as part of the
9 study, including the environmental review process
10 under section 805;

11 (2) convene a meeting of all Federal, tribal, and
12 State agencies identified under section 805(d) that
13 may—

14 (A) have jurisdiction over the project;

15 (B) be required by law to conduct or issue
16 a review, analysis, opinion, or statement for the
17 project study; or

18 (C) be required to make a determination
19 on issuing a permit, license, or other approval
20 or decision for the project study; and

21 (3) take all steps necessary to provide informa-
22 tion that will enable required reviews and analyses
23 related to the project to be conducted by other agen-
24 cies in a thorough and timely manner.

1 (e) INTERIM REPORT.—Not later than 18 months
2 after the date of enactment of this Act, the Secretary shall
3 submit to the Committee on Natural Resources of the
4 House of Representatives and the Committee on Energy
5 and Natural Resources of the Senate and make publicly
6 available a report that describes—

7 (1) the status of the implementation of the
8 planning process under this section, including the
9 number of participating projects;

10 (2) a review of project delivery schedules, in-
11 cluding a description of any delays on those studies
12 initiated prior to the date of the enactment of this
13 Act; and

14 (3) any recommendations for additional author-
15 ity necessary to support efforts to expedite the
16 project.

17 (f) FINAL REPORT.—Not later than 4 years after the
18 date of enactment of this Act, the Secretary shall submit
19 to the Committee on Natural Resources of the House of
20 Representatives and the Committee on Energy and Nat-
21 ural Resources of the Senate and make publicly available
22 a report that describes—

23 (1) the status of the implementation of this sec-
24 tion, including a description of each project study
25 subject to the requirements of this section;

1 (2) the amount of time taken to complete each
2 project study; and

3 (3) any recommendations for additional author-
4 ity necessary to support efforts to expedite the
5 project study process, including an analysis of
6 whether the limitation established by subsection
7 (a)(2) needs to be adjusted to address the impacts
8 of inflation.

9 **SEC. 804. EXPEDITED COMPLETION OF REPORTS.**

10 The Secretary shall—

11 (1) expedite the completion of any ongoing
12 project study initiated before the date of enactment
13 of this Act; and

14 (2) if the Secretary determines that the project
15 is justified in a completed report, proceed directly to
16 preconstruction planning, engineering, and design of
17 the project in accordance with the Reclamation Act
18 of 1902 (32 Stat. 388), and all Acts amendatory
19 thereof or supplementary thereto.

20 **SEC. 805. PROJECT ACCELERATION.**

21 (a) APPLICABILITY.—

22 (1) IN GENERAL.—This section shall apply to—

23 (A) each project study that is initiated
24 after the date of enactment of this Act and for
25 which an environmental impact statement is

1 prepared under the National Environmental
2 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

3 (B) the extent determined appropriate by
4 the Secretary, to other project studies initiated
5 before the date of enactment of this Act and for
6 which an environmental review process docu-
7 ment is prepared under the National Environ-
8 mental Policy Act of 1969 (42 U.S.C. 4321 et
9 seq.); and

10 (C) any project study for the development
11 of a non-federally owned and operated surface
12 water storage project for which the Secretary
13 determines there is a demonstrable Federal in-
14 terest and the project—

15 (i) is located in a river basin where
16 other Bureau of Reclamation water
17 projects are located;

18 (ii) will create additional water sup-
19 plies that support Bureau of Reclamation
20 water projects; or

21 (iii) will become integrated into the
22 operation of Bureau of Reclamation water
23 projects.

24 (2) FLEXIBILITY.—Any authority granted
25 under this section may be exercised, and any re-

1 requirement established under this section may be sat-
2 isfied, for the conduct of an environmental review
3 process for a project study, a class of project stud-
4 ies, or a program of project studies.

5 (3) LIST OF PROJECT STUDIES.—

6 (A) IN GENERAL.—The Secretary shall an-
7 nually prepare, and make publicly available, a
8 list of all project studies that the Secretary has
9 determined—

10 (i) meets the standards described in
11 paragraph (1); and

12 (ii) does not have adequate funding to
13 make substantial progress toward the com-
14 pletion of the project study.

15 (B) INCLUSIONS.—The Secretary shall in-
16 clude for each project study on the list under
17 subparagraph (A) a description of the estimated
18 amounts necessary to make substantial progress
19 on the project study.

20 (b) PROJECT REVIEW PROCESS.—

21 (1) IN GENERAL.—The Secretary shall develop
22 and implement a coordinated environmental review
23 process for the development of project studies.

24 (2) COORDINATED REVIEW.—The coordinated
25 environmental review process described in paragraph

1 (1) shall require that any review, analysis, opinion,
2 statement, permit, license, or other approval or deci-
3 sion issued or made by a Federal, State, or local
4 governmental agency or an Indian tribe for a project
5 study described in subsection (b) be conducted, to
6 the maximum extent practicable, concurrently with
7 any other applicable governmental agency or Indian
8 tribe.

9 (3) TIMING.—The coordinated environmental
10 review process under this subsection shall be com-
11 pleted not later than the date on which the Sec-
12 retary, in consultation and concurrence with the
13 agencies identified under section 805(d), establishes
14 with respect to the project study.

15 (c) LEAD AGENCIES.—

16 (1) JOINT LEAD AGENCIES.—

17 (A) IN GENERAL.—Subject to the require-
18 ments of the National Environmental Policy
19 Act of 1969 (42 U.S.C. 4321 et seq.) and the
20 requirements of section 1506.8 of title 40, Code
21 of Federal Regulations (or successor regula-
22 tions), including the concurrence of the pro-
23 posed joint lead agency, a project sponsor may
24 serve as the joint lead agency.

1 (B) PROJECT SPONSOR AS JOINT LEAD
2 AGENCY.—A project sponsor that is a State or
3 local governmental entity may—

4 (i) with the concurrence of the Sec-
5 retary, serve as a joint lead agency with
6 the Federal lead agency for purposes of
7 preparing any environmental document
8 under the National Environmental Policy
9 Act of 1969 (42 U.S.C. 4321 et seq.); and

10 (ii) prepare any environmental review
11 process document under the National En-
12 vironmental Policy Act of 1969 (42 U.S.C.
13 4321 et seq.) required in support of any
14 action or approval by the Secretary if—

15 (I) the Secretary provides guid-
16 ance in the preparation process and
17 independently evaluates that docu-
18 ment;

19 (II) the project sponsor complies
20 with all requirements applicable to the
21 Secretary under—

22 (aa) the National Environ-
23 mental Policy Act of 1969 (42
24 U.S.C. 4321 et seq.);

1 (bb) any regulation imple-
2 menting that Act; and

3 (cc) any other applicable
4 Federal law; and

5 (III) the Secretary approves and
6 adopts the document before the Sec-
7 retary takes any subsequent action or
8 makes any approval based on that
9 document, regardless of whether the
10 action or approval of the Secretary re-
11 sults in Federal funding.

12 (2) DUTIES.—The Secretary shall ensure
13 that—

14 (A) the project sponsor complies with all
15 design and mitigation commitments made joint-
16 ly by the Secretary and the project sponsor in
17 any environmental document prepared by the
18 project sponsor in accordance with this sub-
19 section; and

20 (B) any environmental document prepared
21 by the project sponsor is appropriately supple-
22 mented to address any changes to the project
23 the Secretary determines are necessary.

24 (3) ADOPTION AND USE OF DOCUMENTS.—Any
25 environmental document prepared in accordance

1 with this subsection shall be adopted and used by
2 any Federal agency making any determination re-
3 lated to the project study to the same extent that
4 the Federal agency could adopt or use a document
5 prepared by another Federal agency under—

6 (A) the National Environmental Policy Act
7 of 1969 (42 U.S.C. 4321 et seq.); and

8 (B) parts 1500 through 1508 of title 40,
9 Code of Federal Regulations (or successor regu-
10 lations).

11 (4) ROLES AND RESPONSIBILITY OF LEAD
12 AGENCY.—With respect to the environmental review
13 process for any project study, the Federal lead agen-
14 cy shall have authority and responsibility—

15 (A) to take such actions as are necessary
16 and proper and within the authority of the Fed-
17 eral lead agency to facilitate the expeditious
18 resolution of the environmental review process
19 for the project study; and

20 (B) to prepare or ensure that any required
21 environmental impact statement or other envi-
22 ronmental review document for a project study
23 required to be completed under the National
24 Environmental Policy Act of 1969 (42 U.S.C.

1 4321 et seq.) is completed in accordance with
2 this section and applicable Federal law.

3 (d) PARTICIPATING AND COOPERATING AGENCIES.—

4 (1) IDENTIFICATION OF JURISDICTIONAL AGEN-
5 CIES.—With respect to carrying out the environ-
6 mental review process for a project study, the Sec-
7 retary shall identify, as early as practicable in the
8 environmental review process, all Federal, State, and
9 local government agencies and Indian tribes that
10 may—

11 (A) have jurisdiction over the project;

12 (B) be required by law to conduct or issue
13 a review, analysis, opinion, or statement for the
14 project study; or

15 (C) be required to make a determination
16 on issuing a permit, license, or other approval
17 or decision for the project study.

18 (2) STATE AUTHORITY.—If the environmental
19 review process is being implemented by the Sec-
20 retary for a project study within the boundaries of
21 a State, the State, consistent with State law, may
22 choose to participate in the process and to make
23 subject to the process all State agencies that—

24 (A) have jurisdiction over the project;

1 (B) are required to conduct or issue a re-
2 view, analysis, opinion, or statement for the
3 project study; or

4 (C) are required to make a determination
5 on issuing a permit, license, or other approval
6 or decision for the project study.

7 (3) INVITATION.—

8 (A) IN GENERAL.—The Federal lead agen-
9 cy shall invite, as early as practicable in the en-
10 vironmental review process, any agency identi-
11 fied under paragraph (1) to become a partici-
12 pating or cooperating agency, as applicable, in
13 the environmental review process for the project
14 study.

15 (B) DEADLINE.—An invitation to partici-
16 pate issued under subparagraph (A) shall set a
17 deadline by which a response to the invitation
18 shall be submitted, which may be extended by
19 the Federal lead agency for good cause.

20 (4) PROCEDURES.—Section 1501.6 of title 40,
21 Code of Federal Regulations (as in effect on the
22 date of enactment of the Bureau of Reclamation
23 Surface Water Storage Streamlining Act) shall gov-
24 ern the identification and the participation of a co-
25 operating agency.

1 (5) FEDERAL COOPERATING AGENCIES.—Any
2 Federal agency that is invited by the Federal lead
3 agency to participate in the environmental review
4 process for a project study shall be designated as a
5 cooperating agency by the Federal lead agency un-
6 less the invited agency informs the Federal lead
7 agency, in writing, by the deadline specified in the
8 invitation that the invited agency—

9 (A)(i) has no jurisdiction or authority with
10 respect to the project;

11 (ii) has no expertise or information rel-
12 evant to the project; or

13 (iii) does not have adequate funds to par-
14 ticipate in the project; and

15 (B) does not intend to submit comments
16 on the project.

17 (6) ADMINISTRATION.—A participating or co-
18 operating agency shall comply with this section and
19 any schedule established under this section.

20 (7) EFFECT OF DESIGNATION.—Designation as
21 a participating or cooperating agency under this
22 subsection shall not imply that the participating or
23 cooperating agency—

24 (A) supports a proposed project; or

1 (B) has any jurisdiction over, or special ex-
2 pertise with respect to evaluation of, the
3 project.

4 (8) CONCURRENT REVIEWS.—Each partici-
5 pating or cooperating agency shall—

6 (A) carry out the obligations of that agen-
7 cy under other applicable law concurrently and
8 in conjunction with the required environmental
9 review process, unless doing so would prevent
10 the participating or cooperating agency from
11 conducting needed analysis or otherwise car-
12 rying out those obligations; and

13 (B) formulate and implement administra-
14 tive, policy, and procedural mechanisms to en-
15 able the agency to ensure completion of the en-
16 vironmental review process in a timely, coordi-
17 nated, and environmentally responsible manner.

18 (e) NON-FEDERAL PROJECTS INTEGRATED INTO
19 RECLAMATION SYSTEMS.—The Federal lead agency shall
20 serve in that capacity for the entirety of all non-Federal
21 projects that will be integrated into a larger system owned,
22 operated or administered in whole or in part by the Bu-
23 reau of Reclamation.

24 (f) NON-FEDERAL PROJECT.—If the Secretary deter-
25 mines that a project can be expedited by a non-Federal

1 sponsor and that there is a demonstrable Federal interest
2 in expediting that project, the Secretary shall take such
3 actions as are necessary to advance such a project as a
4 non-Federal project, including, but not limited to, entering
5 into agreements with the non-Federal sponsor of such
6 project to support the planning, design and permitting of
7 such project as a non-Federal project.

8 (g) PROGRAMMATIC COMPLIANCE.—

9 (1) IN GENERAL.—The Secretary shall issue
10 guidance regarding the use of programmatic ap-
11 proaches to carry out the environmental review proc-
12 ess that—

13 (A) eliminates repetitive discussions of the
14 same issues;

15 (B) focuses on the actual issues ripe for
16 analyses at each level of review;

17 (C) establishes a formal process for coordi-
18 nating with participating and cooperating agen-
19 cies, including the creation of a list of all data
20 that are needed to carry out an environmental
21 review process; and

22 (D) complies with—

23 (i) the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4321 et seq.); and

25 (ii) all other applicable laws.

1 (2) REQUIREMENTS.—In carrying out para-
2 graph (1), the Secretary shall—

3 (A) as the first step in drafting guidance
4 under that paragraph, consult with relevant
5 Federal, State, and local governmental agen-
6 cies, Indian tribes, and the public on the appro-
7 priate use and scope of the programmatic ap-
8 proaches;

9 (B) emphasize the importance of collabora-
10 tion among relevant Federal, State, and local
11 governmental agencies, and Indian tribes in un-
12 dertaking programmatic reviews, especially with
13 respect to including reviews with a broad geo-
14 graphical scope;

15 (C) ensure that the programmatic re-
16 views—

17 (i) promote transparency, including of
18 the analyses and data used in the environ-
19 mental review process, the treatment of
20 any deferred issues raised by Federal,
21 State, and local governmental agencies, In-
22 dian tribes, or the public, and the temporal
23 and special scales to be used to analyze
24 those issues;

1 (ii) use accurate and timely informa-
2 tion in the environmental review process,
3 including—

4 (I) criteria for determining the
5 general duration of the usefulness of
6 the review; and

7 (II) the timeline for updating any
8 out-of-date review;

9 (iii) describe—
10 (I) the relationship between pro-
11 grammatic analysis and future tiered
12 analysis; and

13 (II) the role of the public in the
14 creation of future tiered analysis; and

15 (iv) are available to other relevant
16 Federal, State, and local governmental
17 agencies, Indian tribes, and the public;

18 (D) allow not fewer than 60 days of public
19 notice and comment on any proposed guidance;
20 and

21 (E) address any comments received under
22 subparagraph (D).

23 (h) COORDINATED REVIEWS.—

24 (1) COORDINATION PLAN.—

1 (A) ESTABLISHMENT.—The Federal lead
2 agency shall, after consultation with and with
3 the concurrence of each participating and co-
4 operating agency and the project sponsor or
5 joint lead agency, as applicable, establish a plan
6 for coordinating public and agency participation
7 in, and comment on, the environmental review
8 process for a project study or a category of
9 project studies.

10 (B) SCHEDULE.—

11 (i) IN GENERAL.—As soon as prac-
12 ticable but not later than 45 days after the
13 close of the public comment period on a
14 draft environmental impact statement, the
15 Federal lead agency, after consultation
16 with and the concurrence of each partici-
17 pating and cooperating agency and the
18 project sponsor or joint lead agency, as ap-
19 plicable, shall establish, as part of the co-
20 ordination plan established in subpara-
21 graph (A), a schedule for completion of the
22 environmental review process for the
23 project study.

1 (ii) FACTORS FOR CONSIDERATION.—

2 In establishing a schedule, the Secretary
3 shall consider factors such as—

4 (I) the responsibilities of partici-
5 pating and cooperating agencies under
6 applicable laws;

7 (II) the resources available to the
8 project sponsor, joint lead agency, and
9 other relevant Federal and State
10 agencies, as applicable;

11 (III) the overall size and com-
12 plexity of the project;

13 (IV) the overall schedule for and
14 cost of the project; and

15 (V) the sensitivity of the natural
16 and historical resources that could be
17 affected by the project.

18 (iii) MODIFICATIONS.—The Secretary
19 may—

20 (I) lengthen a schedule estab-
21 lished under clause (i) for good cause;
22 and

23 (II) shorten a schedule only with
24 concurrence of the affected partici-
25 pating and cooperating agencies and

1 the project sponsor or joint lead agen-
2 cy, as applicable.

3 (iv) DISSEMINATION.—A copy of a
4 schedule established under clause (i) shall
5 be—

6 (I) provided to each participating
7 and cooperating agency and the
8 project sponsor or joint lead agency,
9 as applicable; and

10 (II) made available to the public.

11 (2) COMMENT DEADLINES.—The Federal lead
12 agency shall establish the following deadlines for
13 comment during the environmental review process
14 for a project study:

15 (A) DRAFT ENVIRONMENTAL IMPACT
16 STATEMENTS.—For comments by Federal and
17 State agencies and the public on a draft envi-
18 ronmental impact statement, a period of not
19 more than 60 days after publication in the Fed-
20 eral Register of notice of the date of public
21 availability of the draft environmental impact
22 statement, unless—

23 (i) a different deadline is established
24 by agreement of the Federal lead agency,
25 the project sponsor or joint lead agency, as

1 applicable, and all participating and co-
2 operating agencies; or

3 (ii) the deadline is extended by the
4 Federal lead agency for good cause.

5 (B) OTHER ENVIRONMENTAL REVIEW
6 PROCESSES.—For all other comment periods es-
7 tablished by the Federal lead agency for agency
8 or public comments in the environmental review
9 process, a period of not more than 30 days
10 after the date on which the materials on which
11 comment is requested are made available, un-
12 less—

13 (i) a different deadline is established
14 by agreement of the Federal lead agency,
15 the project sponsor, or joint lead agency,
16 as applicable, and all participating and co-
17 operating agencies; or

18 (ii) the deadline is extended by the
19 Federal lead agency for good cause.

20 (3) DEADLINES FOR DECISIONS UNDER OTHER
21 LAWS.—In any case in which a decision under any
22 Federal law relating to a project study, including the
23 issuance or denial of a permit or license, is required
24 to be made by the date described in subsection
25 (i)(5)(B), the Secretary shall submit to the Com-

1 mittee on Natural Resources of the House of Rep-
2 resentatives and the Committee on Energy and Nat-
3 ural Resources of the Senate—

4 (A) as soon as practicable after the 180-
5 day period described in subsection (i)(5)(B), an
6 initial notice of the failure of the Federal agen-
7 cy to make the decision; and

8 (B) every 60 days thereafter until such
9 date as all decisions of the Federal agency re-
10 relating to the project study have been made by
11 the Federal agency, an additional notice that
12 describes the number of decisions of the Fed-
13 eral agency that remain outstanding as of the
14 date of the additional notice.

15 (4) INVOLVEMENT OF THE PUBLIC.—Nothing
16 in this subsection reduces any time period provided
17 for public comment in the environmental review
18 process under applicable Federal law (including reg-
19 ulations).

20 (5) TRANSPARENCY REPORTING.—

21 (A) REPORTING REQUIREMENTS.—Not
22 later than 1 year after the date of enactment of
23 this Act, the Secretary shall establish and main-
24 tain an electronic database and, in coordination
25 with other Federal and State agencies, issue re-

1 porting requirements to make publicly available
2 the status and progress with respect to compli-
3 ance with applicable requirements of the Na-
4 tional Environmental Policy Act of 1969 (42
5 U.S.C. 4321 et seq.) and any other Federal,
6 State, or local approval or action required for a
7 project study for which this section is applica-
8 ble.

9 (B) PROJECT STUDY TRANSPARENCY.—

10 Consistent with the requirements established
11 under subparagraph (A), the Secretary shall
12 make publicly available the status and progress
13 of any Federal, State, or local decision, action,
14 or approval required under applicable laws for
15 each project study for which this section is ap-
16 plicable.

17 (i) ISSUE IDENTIFICATION AND RESOLUTION.—

18 (1) COOPERATION.—The Federal lead agency,
19 the cooperating agencies, and any participating
20 agencies shall work cooperatively in accordance with
21 this section to identify and resolve issues that could
22 delay completion of the environmental review process
23 or result in the denial of any approval required for
24 the project study under applicable laws.

1 (2) FEDERAL LEAD AGENCY RESPONSIBIL-
2 ITIES.—

3 (A) IN GENERAL.—The Federal lead agen-
4 cy shall make information available to the co-
5 operating agencies and participating agencies as
6 early as practicable in the environmental review
7 process regarding the environmental and socio-
8 economic resources located within the project
9 area and the general locations of the alter-
10 natives under consideration.

11 (B) DATA SOURCES.—The information
12 under subparagraph (A) may be based on exist-
13 ing data sources, including geographic informa-
14 tion systems mapping.

15 (3) COOPERATING AND PARTICIPATING AGENCY
16 RESPONSIBILITIES.—Based on information received
17 from the Federal lead agency, cooperating and par-
18 ticipating agencies shall identify, as early as prac-
19 ticable, any issues of concern regarding the potential
20 environmental or socioeconomic impacts of the
21 project, including any issues that could substantially
22 delay or prevent an agency from granting a permit
23 or other approval that is needed for the project
24 study.

1 (4) ACCELERATED ISSUE RESOLUTION AND
2 ELEVATION.—

3 (A) IN GENERAL.—On the request of a
4 participating or cooperating agency or project
5 sponsor, the Secretary shall convene an issue
6 resolution meeting with the relevant partici-
7 pating and cooperating agencies and the project
8 sponsor or joint lead agency, as applicable, to
9 resolve issues that may—

10 (i) delay completion of the environ-
11 mental review process; or

12 (ii) result in denial of any approval re-
13 quired for the project study under applica-
14 ble laws.

15 (B) MEETING DATE.—A meeting requested
16 under this paragraph shall be held not later
17 than 21 days after the date on which the Sec-
18 retary receives the request for the meeting, un-
19 less the Secretary determines that there is good
20 cause to extend that deadline.

21 (C) NOTIFICATION.—On receipt of a re-
22 quest for a meeting under this paragraph, the
23 Secretary shall notify all relevant participating
24 and cooperating agencies of the request, includ-

1 ing the issue to be resolved and the date for the
2 meeting.

3 (D) ELEVATION OF ISSUE RESOLUTION.—

4 If a resolution cannot be achieved within the
5 30-day period beginning on the date of a meet-
6 ing under this paragraph and a determination
7 is made by the Secretary that all information
8 necessary to resolve the issue has been ob-
9 tained, the Secretary shall forward the dispute
10 to the heads of the relevant agencies for resolu-
11 tion.

12 (E) CONVENTION BY SECRETARY.—The

13 Secretary may convene an issue resolution
14 meeting under this paragraph at any time, at
15 the discretion of the Secretary, regardless of
16 whether a meeting is requested under subpara-
17 graph (A).

18 (5) FINANCIAL PENALTY PROVISIONS.—

19 (A) IN GENERAL.—A Federal jurisdictional

20 agency shall complete any required approval or
21 decision for the environmental review process
22 on an expeditious basis using the shortest exist-
23 ing applicable process.

24 (B) FAILURE TO DECIDE.—

25 (i) IN GENERAL.—

1 (I) TRANSFER OF FUNDS.—If a
2 Federal jurisdictional agency fails to
3 render a decision required under any
4 Federal law relating to a project study
5 that requires the preparation of an
6 environmental impact statement or
7 environmental assessment, including
8 the issuance or denial of a permit, li-
9 cense, statement, opinion, or other ap-
10 proval by the date described in clause
11 (ii), the amount of funds made avail-
12 able to support the office of the head
13 of the Federal jurisdictional agency
14 shall be reduced by an amount of
15 funding equal to the amount specified
16 in item (aa) or (bb) of subclause (II),
17 and those funds shall be made avail-
18 able to the division of the Federal ju-
19 risdictional agency charged with ren-
20 dering the decision by not later than
21 1 day after the applicable date under
22 clause (ii), and once each week there-
23 after until a final decision is rendered,
24 subject to subparagraph (C).

1 (II) AMOUNT TO BE TRANS-
2 FERRED.—The amount referred to in
3 subclause (I) is—

4 (aa) \$20,000 for any project
5 study requiring the preparation
6 of an environmental assessment
7 or environmental impact state-
8 ment; or

9 (bb) \$10,000 for any project
10 study requiring any type of re-
11 view under the National Environ-
12 mental Policy Act of 1969 (42
13 U.S.C. 4321 et seq.) other than
14 an environmental assessment or
15 environmental impact statement.

16 (ii) DESCRIPTION OF DATE.—The
17 date referred to in clause (i) is the later
18 of—

19 (I) the date that is 180 days
20 after the date on which an application
21 for the permit, license, or approval is
22 complete; and

23 (II) the date that is 180 days
24 after the date on which the Federal
25 lead agency issues a decision on the

1 project under the National Environ-
2 mental Policy Act of 1969 (42 U.S.C.
3 4321 et seq.).

4 (C) LIMITATIONS.—

5 (i) IN GENERAL.—No transfer of
6 funds under subparagraph (B) relating to
7 an individual project study shall exceed, in
8 any fiscal year, an amount equal to 1 per-
9 cent of the funds made available for the
10 applicable agency office.

11 (ii) FAILURE TO DECIDE.—The total
12 amount transferred in a fiscal year as a re-
13 sult of a failure by an agency to make a
14 decision by an applicable deadline shall not
15 exceed an amount equal to 5 percent of the
16 funds made available for the applicable
17 agency office for that fiscal year.

18 (iii) AGGREGATE.—Notwithstanding
19 any other provision of law, for each fiscal
20 year, the aggregate amount of financial
21 penalties assessed against each applicable
22 agency office under this Act and any other
23 Federal law as a result of a failure of the
24 agency to make a decision by an applicable
25 deadline for environmental review, includ-

1 ing the total amount transferred under this
2 paragraph, shall not exceed an amount
3 equal to 9.5 percent of the funds made
4 available for the agency office for that fis-
5 cal year.

6 (D) NO FAULT OF AGENCY.—

7 (i) IN GENERAL.—A transfer of funds
8 under this paragraph shall not be made if
9 the applicable agency described in subpara-
10 graph (A) notifies, with a supporting ex-
11 planation, the Federal lead agency, cooper-
12 ating agencies, and project sponsor, as ap-
13 plicable, that—

14 (I) the agency has not received
15 necessary information or approvals
16 from another entity in a manner that
17 affects the ability of the agency to
18 meet any requirements under Federal,
19 State, or local law;

20 (II) significant new information,
21 including from public comments, or
22 circumstances, including a major
23 modification to an aspect of the
24 project, requires additional analysis

1 for the agency to make a decision on
2 the project application; or

3 (III) the agency lacks the finan-
4 cial resources to complete the review
5 under the scheduled timeframe, in-
6 cluding a description of the number of
7 full-time employees required to com-
8 plete the review, the amount of fund-
9 ing required to complete the review,
10 and a justification as to why not
11 enough funding is available to com-
12 plete the review by the deadline.

13 (ii) LACK OF FINANCIAL RE-
14 SOURCES.—If the agency provides notice
15 under clause (i)(III), the Inspector General
16 of the agency shall—

17 (I) conduct a financial audit to
18 review the notice; and

19 (II) not later than 90 days after
20 the date on which the review described
21 in subclause (I) is completed, submit
22 to the Committee on Natural Re-
23 sources of the House of Representa-
24 tives and the Committee on Energy

1 and Natural Resources of the Senate
2 a notification on the notice.

3 (E) LIMITATION.—The Federal agency
4 from which funds are transferred pursuant to
5 this paragraph shall not reprogram funds to the
6 office of the head of the agency, or equivalent
7 office, to reimburse that office for the loss of
8 the funds.

9 (F) EFFECT OF PARAGRAPH.—Nothing in
10 this paragraph affects or limits the application
11 of, or obligation to comply with, any Federal,
12 State, local, or tribal law.

13 (j) MEMORANDUM OF AGREEMENTS FOR EARLY CO-
14 ORDINATION.—

15 (1) SENSE OF CONGRESS.—It is the sense of
16 Congress that—

17 (A) the Secretary and other Federal agen-
18 cies with relevant jurisdiction in the environ-
19 mental review process should cooperate with
20 each other, State and local agencies, and Indian
21 tribes on environmental review and Bureau of
22 Reclamation project delivery activities at the
23 earliest practicable time to avoid delays and du-
24 plication of effort later in the process, prevent
25 potential conflicts, and ensure that planning

1 and project development decisions reflect envi-
2 ronmental values; and

3 (B) the cooperation referred to in subpara-
4 graph (A) should include the development of
5 policies and the designation of staff that advise
6 planning agencies and project sponsors of stud-
7 ies or other information foreseeably required for
8 later Federal action and early consultation with
9 appropriate State and local agencies and Indian
10 tribes.

11 (2) TECHNICAL ASSISTANCE.—If requested at
12 any time by a State or project sponsor, the Sec-
13 retary and other Federal agencies with relevant ju-
14 risdiction in the environmental review process, shall,
15 to the maximum extent practicable and appropriate,
16 as determined by the agencies, provide technical as-
17 sistance to the State or project sponsor in carrying
18 out early coordination activities.

19 (3) MEMORANDUM OF AGENCY AGREEMENT.—
20 If requested at any time by a State or project spon-
21 sor, the Federal lead agency, in consultation with
22 other Federal agencies with relevant jurisdiction in
23 the environmental review process, may establish
24 memoranda of agreement with the project sponsor,
25 Indian tribes, State and local governments, and

1 other appropriate entities to carry out the early co-
2 ordination activities, including providing technical
3 assistance in identifying potential impacts and miti-
4 gation issues in an integrated fashion.

5 (k) LIMITATIONS.—Nothing in this section preempts
6 or interferes with—

7 (1) any obligation to comply with the provisions
8 of any Federal law, including—

9 (A) the National Environmental Policy Act
10 of 1969 (42 U.S.C. 4321 et seq.); and

11 (B) any other Federal environmental law;

12 (2) the reviewability of any final Federal agency
13 action in a court of the United States or in the court
14 of any State;

15 (3) any requirement for seeking, considering, or
16 responding to public comment; or

17 (4) any power, jurisdiction, responsibility, duty,
18 or authority that a Federal, State, or local govern-
19 mental agency, Indian tribe, or project sponsor has
20 with respect to carrying out a project or any other
21 provision of law applicable to projects.

22 (l) TIMING OF CLAIMS.—

23 (1) TIMING.—

24 (A) IN GENERAL.—Notwithstanding any
25 other provision of law, a claim arising under

1 Federal law seeking judicial review of a permit,
2 license, or other approval issued by a Federal
3 agency for a project study shall be barred un-
4 less the claim is filed not later than 3 years
5 after publication of a notice in the Federal Reg-
6 ister announcing that the permit, license, or
7 other approval is final pursuant to the law
8 under which the agency action is taken, unless
9 a shorter time is specified in the Federal law
10 that allows judicial review.

11 (B) APPLICABILITY.—Nothing in this sub-
12 section creates a right to judicial review or
13 places any limit on filing a claim that a person
14 has violated the terms of a permit, license, or
15 other approval.

16 (2) NEW INFORMATION.—

17 (A) IN GENERAL.—The Secretary shall
18 consider new information received after the
19 close of a comment period if the information
20 satisfies the requirements for a supplemental
21 environmental impact statement under title 40,
22 Code of Federal Regulations (including suc-
23 cessor regulations).

24 (B) SEPARATE ACTION.—The preparation
25 of a supplemental environmental impact state-

1 ment or other environmental document, if re-
2 quired under this section, shall be considered a
3 separate final agency action and the deadline
4 for filing a claim for judicial review of the ac-
5 tion shall be 3 years after the date of publica-
6 tion of a notice in the Federal Register an-
7 nouncing the action relating to such supple-
8 mental environmental impact statement or
9 other environmental document.

10 (m) CATEGORICAL EXCLUSIONS.—

11 (1) IN GENERAL.—Not later than 180 days
12 after the date of enactment of this Act, the Sec-
13 retary shall—

14 (A) survey the use by the Bureau of Rec-
15 lamation of categorical exclusions in projects
16 since 2005;

17 (B) publish a review of the survey that in-
18 cludes a description of—

19 (i) the types of actions that were cat-
20 egorically excluded or could be the basis
21 for developing a new categorical exclusion;
22 and

23 (ii) any requests previously received
24 by the Secretary for new categorical exclu-
25 sions; and

1 (C) solicit requests from other Federal
2 agencies and project sponsors for new categor-
3 ical exclusions.

4 (2) NEW CATEGORICAL EXCLUSIONS.—Not
5 later than 1 year after the date of enactment of this
6 Act, if the Secretary has identified a category of ac-
7 tivities that merit establishing a categorical exclusion
8 that did not exist on the day before the date of en-
9 actment this Act based on the review under para-
10 graph (1), the Secretary shall publish a notice of
11 proposed rulemaking to propose that new categorical
12 exclusion, to the extent that the categorical exclusion
13 meets the criteria for a categorical exclusion under
14 section 1508.4 of title 40, Code of Federal Regula-
15 tions (or successor regulation).

16 (n) REVIEW OF PROJECT ACCELERATION RE-
17 FORMS.—

18 (1) IN GENERAL.—The Comptroller General of
19 the United States shall—

20 (A) assess the reforms carried out under
21 this section; and

22 (B) not later than 5 years and not later
23 than 10 years after the date of enactment of
24 this Act, submit to the Committee on Natural
25 Resources of the House of Representatives and

1 the Committee on Energy and Natural Re-
2 sources of the Senate a report that describes
3 the results of the assessment.

4 (2) CONTENTS.—The reports under paragraph
5 (1) shall include an evaluation of impacts of the re-
6 forms carried out under this section on—

7 (A) project delivery;

8 (B) compliance with environmental laws;

9 and

10 (C) the environmental impact of projects.

11 (o) PERFORMANCE MEASUREMENT.—The Secretary
12 shall establish a program to measure and report on
13 progress made toward improving and expediting the plan-
14 ning and environmental review process.

15 (p) CATEGORICAL EXCLUSIONS IN EMERGENCIES.—
16 For the repair, reconstruction, or rehabilitation of a Bu-
17 reau of Reclamation surface water storage project that is
18 in operation or under construction when damaged by an
19 event or incident that results in a declaration by the Presi-
20 dent of a major disaster or emergency pursuant to the
21 Robert T. Stafford Disaster Relief and Emergency Assist-
22 ance Act (42 U.S.C. 5121 et seq.), the Secretary shall
23 treat such repair, reconstruction, or rehabilitation activity
24 as a class of action categorically excluded from the re-
25 quirements relating to environmental assessments or envi-

1 ronmental impact statements under section 1508.4 of title
2 40, Code of Federal Regulations (or successor regula-
3 tions), if the repair or reconstruction activity is—

4 (1) in the same location with the same capacity,
5 dimensions, and design as the original Bureau of
6 Reclamation surface water storage project as before
7 the declaration described in this section; and

8 (2) commenced within a 2-year period begin-
9 ning on the date of a declaration described in this
10 subsection.

11 **SEC. 806. ANNUAL REPORT TO CONGRESS.**

12 (a) IN GENERAL.—Not later than February 1 of each
13 year, the Secretary shall develop and submit to the Com-
14 mittee on Natural Resources of the House of Representa-
15 tives and the Committee on Energy and Natural Re-
16 sources of the Senate an annual report, to be entitled “Re-
17 port to Congress on Future Water Project Development”,
18 that identifies the following:

19 (1) PROJECT REPORTS.—Each project report
20 that meets the criteria established in subsection
21 (c)(1)(A).

22 (2) PROPOSED PROJECT STUDIES.—Any pro-
23 posed project study submitted to the Secretary by a
24 non-Federal interest pursuant to subsection (b) that

1 meets the criteria established in subsection
2 (c)(1)(A).

3 (3) PROPOSED MODIFICATIONS.—Any proposed
4 modification to an authorized water project or
5 project study that meets the criteria established in
6 subsection (c)(1)(A) that—

7 (A) is submitted to the Secretary by a non-
8 Federal interest pursuant to subsection (b); or

9 (B) is identified by the Secretary for au-
10 thorization.

11 (4) EXPEDITED COMPLETION OF REPORT AND
12 DETERMINATIONS.—Any project study that was ex-
13 pedited and any Secretarial determinations under
14 section 804.

15 (b) REQUESTS FOR PROPOSALS.—

16 (1) PUBLICATION.—Not later than May 1 of
17 each year, the Secretary shall publish in the Federal
18 Register a notice requesting proposals from non-
19 Federal interests for proposed project studies and
20 proposed modifications to authorized projects and
21 project studies to be included in the annual report.

22 (2) DEADLINE FOR REQUESTS.—The Secretary
23 shall include in each notice required by this sub-
24 section a requirement that non-Federal interests
25 submit to the Secretary any proposals described in

1 paragraph (1) by not later than 120 days after the
2 date of publication of the notice in the Federal Reg-
3 ister in order for the proposals to be considered for
4 inclusion in the annual report.

5 (3) NOTIFICATION.—On the date of publication
6 of each notice required by this subsection, the Sec-
7 retary shall—

8 (A) make the notice publicly available, in-
9 cluding on the Internet; and

10 (B) provide written notification of the pub-
11 lication to the Committee on Natural Resources
12 of the House of Representatives and the Com-
13 mittee on Energy and Natural Resources of the
14 Senate.

15 (c) CONTENTS.—

16 (1) PROJECT REPORTS, PROPOSED PROJECT
17 STUDIES, AND PROPOSED MODIFICATIONS.—

18 (A) CRITERIA FOR INCLUSION IN RE-
19 PORT.—The Secretary shall include in the an-
20 nual report only those project reports, proposed
21 project studies, and proposed modifications to
22 authorized projects and project studies that—

23 (i) are related to the missions and au-
24 thorities of the Bureau of Reclamation;

1 (ii) require specific congressional au-
2 thorization, including by an Act of Con-
3 gress;

4 (iii) have not been congressionally au-
5 thorized;

6 (iv) have not been included in any
7 previous annual report; and

8 (v) if authorized, could be carried out
9 by the Bureau of Reclamation.

10 (B) DESCRIPTION OF BENEFITS.—

11 (i) DESCRIPTION.—The Secretary
12 shall describe in the annual report, to the
13 extent applicable and practicable, for each
14 proposed project study and proposed modi-
15 fication to an authorized water resources
16 development project or project study in-
17 cluded in the annual report, the benefits,
18 as described in clause (ii), of each such
19 study or proposed modification.

20 (ii) BENEFITS.—The benefits (or ex-
21 pected benefits, in the case of a proposed
22 project study) described in this clause are
23 benefits to—

24 (I) the protection of human life
25 and property;

(II) improvement to domestic irrigated water and power supplies;

(III) the national economy;

(IV) the environment; or

(V) the national security interests of the United States.

(C) IDENTIFICATION OF OTHER FACTORS.—The Secretary shall identify in the annual report, to the extent practicable—

(i) for each proposed project study included in the annual report, the non-Federal interest that submitted the proposed project study pursuant to subsection (b); and

(ii) for each proposed project study and proposed modification to a project or project study included in the annual report, whether the non-Federal interest has demonstrated—

(I) that local support exists for the proposed project study or proposed modification to an authorized project or project study (including the surface water storage development project that is the subject of the pro-

1 posed feasibility study or the proposed
2 modification to an authorized project
3 study); and

4 (II) the financial ability to pro-
5 vide the required non-Federal cost
6 share.

7 (2) TRANSPARENCY.—The Secretary shall in-
8 clude in the annual report, for each project report,
9 proposed project study, and proposed modification to
10 a project or project study included under paragraph
11 (1)(A)—

12 (A) the name of the associated non-Fed-
13 eral interest, including the name of any non-
14 Federal interest that has contributed, or is ex-
15 pected to contribute, a non-Federal share of the
16 cost of—

17 (i) the project report;

18 (ii) the proposed project study;

19 (iii) the authorized project study for
20 which the modification is proposed; or

21 (iv) construction of—

22 (I) the project that is the subject
23 of—

24 (aa) the water report;

1 (bb) the proposed project
2 study; or

3 (cc) the authorized project
4 study for which a modification is
5 proposed; or

6 (II) the proposed modification to
7 a project;

8 (B) a letter or statement of support for the
9 water report, proposed project study, or pro-
10 posed modification to a project or project study
11 from each associated non-Federal interest;

12 (C) the purpose of the feasibility report,
13 proposed feasibility study, or proposed modi-
14 fication to a project or project study;

15 (D) an estimate, to the extent practicable,
16 of the Federal, non-Federal, and total costs
17 of—

18 (i) the proposed modification to an
19 authorized project study; and

20 (ii) construction of—

21 (I) the project that is the subject
22 of—

23 (aa) the project report; or

24 (bb) the authorized project
25 study for which a modification is

1 proposed, with respect to the
2 change in costs resulting from
3 such modification; or

4 (II) the proposed modification to
5 an authorized project; and

6 (E) an estimate, to the extent practicable,
7 of the monetary and nonmonetary benefits of—

8 (i) the project that is the subject of—

9 (I) the project report; or

10 (II) the authorized project study
11 for which a modification is proposed,
12 with respect to the benefits of such
13 modification; or

14 (ii) the proposed modification to an
15 authorized project.

16 (3) CERTIFICATION.—The Secretary shall in-
17 clude in the annual report a certification stating
18 that each feasibility report, proposed feasibility
19 study, and proposed modification to a project or
20 project study included in the annual report meets
21 the criteria established in paragraph (1)(A).

22 (4) APPENDIX.—The Secretary shall include in
23 the annual report an appendix listing the proposals
24 submitted under subsection (b) that were not in-
25 cluded in the annual report under paragraph (1)(A)

1 and a description of why the Secretary determined
2 that those proposals did not meet the criteria for in-
3 clusion under such paragraph.

4 (d) SPECIAL RULE FOR INITIAL ANNUAL REPORT.—
5 Notwithstanding any other deadlines required by this sec-
6 tion, the Secretary shall—

7 (1) not later than 60 days after the date of en-
8 actment of this Act, publish in the Federal Register
9 a notice required by subsection (b)(1); and

10 (2) include in such notice a requirement that
11 non-Federal interests submit to the Secretary any
12 proposals described in subsection (b)(1) by not later
13 than 120 days after the date of publication of such
14 notice in the Federal Register in order for such pro-
15 posals to be considered for inclusion in the first an-
16 nual report developed by the Secretary under this
17 section.

18 (e) PUBLICATION.—Upon submission of an annual
19 report to Congress, the Secretary shall make the annual
20 report publicly available, including through publication on
21 the Internet.

22 (f) DEFINITION.—In this section, the term “project
23 report” means a final feasibility report developed under
24 the Reclamation Act of 1902 (32 Stat. 388), and all Acts
25 amendatory thereof or supplementary thereto.

1 **TITLE IX—ACCELERATED REV-**
2 **ENUE, REPAYMENT, AND SUR-**
3 **FACE WATER STORAGE EN-**
4 **HANCEMENT**

5 **SEC. 901. SHORT TITLE.**

6 This title may be cited as the “Accelerated Revenue,
7 Repayment, and Surface Water Storage Enhancement
8 Act”.

9 **SEC. 902. PREPAYMENT OF CERTAIN REPAYMENT CON-**
10 **TRACTS BETWEEN THE UNITED STATES AND**
11 **CONTRACTORS OF FEDERALLY DEVELOPED**
12 **WATER SUPPLIES.**

13 (a) CONVERSION AND PREPAYMENT OF CON-
14 TRACTS.—

15 (1) CONVERSION.—Upon request of the con-
16 tractor, the Secretary of the Interior shall convert
17 any water service contract in effect on the date of
18 enactment of this Act and between the United
19 States and a water users’ association to allow for
20 prepayment of the repayment contract pursuant to
21 paragraph (2) under mutually agreeable terms and
22 conditions. The manner of conversion under this
23 paragraph shall be as follows:

24 (A) Water service contracts that were en-
25 tered into under section 9(e) of the Act of Au-

1 gust 4, 1939 (53 Stat. 1196), to be converted
2 under this section shall be converted to repay-
3 ment contracts under section 9(d) of that Act
4 (53 Stat. 1195).

5 (B) Water service contracts that were en-
6 tered under subsection (c)(2) of section 9 of the
7 Act of August 4, 1939 (53 Stat. 1194), to be
8 converted under this section shall be converted
9 to a contract under subsection (c)(1) of section
10 9 of that Act (53 Stat. 1195).

11 (2) PREPAYMENT.—All repayment contracts
12 under section 9(d) of that Act (53 Stat. 1195) in ef-
13 fect on the date of enactment of this Act and all
14 contracts converted pursuant to paragraph (1)(A)
15 shall—

16 (A) upon request of the contractor, provide
17 for the repayment, either in lump sum or by ac-
18 celerated prepayment, of the remaining con-
19 struction costs identified in water project spe-
20 cific irrigation rate repayment schedules, as ad-
21 justed to reflect payment not reflected in such
22 schedule, and properly assignable for ultimate
23 return by the contractor, or if made in approxi-
24 mately equal installments, no later than 3 years
25 after the effective date of the repayment con-

1 tract; such amount to be discounted by $\frac{1}{2}$ the
2 Treasury rate. An estimate of the remaining
3 construction costs, as adjusted, shall be pro-
4 vided by the Secretary to the contractor no
5 later than 90 days following receipt of request
6 of the contractor;

7 (B) require that construction costs or
8 other capitalized costs incurred after the effec-
9 tive date of the contract or not reflected in the
10 rate schedule referenced in subparagraph (A),
11 and properly assignable to such contractor shall
12 be repaid in not more than 5 years after notifi-
13 cation of the allocation if such amount is a re-
14 sult of a collective annual allocation of capital
15 costs to the contractors exercising contract con-
16 versation under this subsection of less than
17 \$5,000,000. If such amount is \$5,000,000 or
18 greater, such cost shall be repaid as provided by
19 applicable reclamation law;

20 (C) provide that power revenues will not be
21 available to aid in repayment of construction
22 costs allocated to irrigation under the contract;
23 and

24 (D) continue so long as the contractor
25 pays applicable charges, consistent with section

1 9(d) of the Act of August 4, 1939 (53 Stat.
2 1195), and applicable law.

3 (3) CONTRACT REQUIREMENTS.—The following
4 shall apply with regard to all repayment contracts
5 under subsection (c)(1) of section 9 of that Act (53
6 Stat. 1195) in effect on the date of enactment of
7 this Act and all contracts converted pursuant to
8 paragraph (1)(B):

9 (A) Upon request of the contractor, pro-
10 vide for the repayment in lump sum of the re-
11 maining construction costs identified in water
12 project specific municipal and industrial rate re-
13 payment schedules, as adjusted to reflect pay-
14 ments not reflected in such schedule, and prop-
15 erly assignable for ultimate return by the con-
16 tractor. An estimate of the remaining construc-
17 tion costs, as adjusted, shall be provided by the
18 Secretary to the contractor no later than 90
19 days after receipt of request of contractor.

20 (B) The contract shall require that con-
21 struction costs or other capitalized costs in-
22 curred after the effective date of the contract or
23 not reflected in the rate schedule referenced in
24 subparagraph (A), and properly assignable to
25 such contractor, shall be repaid in not more

1 than 5 years after notification of the allocation
2 if such amount is a result of a collective annual
3 allocation of capital costs to the contractors ex-
4 ercising contract conversation under this sub-
5 section of less than \$5,000,000. If such amount
6 is \$5,000,000 or greater, such cost shall be re-
7 paid as provided by applicable reclamation law.

8 (C) Continue so long as the contractor
9 pays applicable charges, consistent with section
10 9(c)(1) of the Act of August 4, 1939 (53 Stat.
11 1195), and applicable law.

12 (4) CONDITIONS.—All contracts entered into
13 pursuant to paragraphs (1), (2), and (3) shall—

14 (A) not be adjusted on the basis of the
15 type of prepayment financing used by the water
16 users' association;

17 (B) conform to any other agreements, such
18 as applicable settlement agreements and new
19 constructed appurtenant facilities; and

20 (C) not modify other water service, repay-
21 ment, exchange and transfer contractual rights
22 between the water users' association, and the
23 Bureau of Reclamation, or any rights, obliga-
24 tions, or relationships of the water users' asso-

1 ciation and their landowners as provided under
2 State law.

3 (b) ACCOUNTING.—The amounts paid pursuant to
4 subsection (a) shall be subject to adjustment following a
5 final cost allocation by the Secretary of the Interior. In
6 the event that the final cost allocation indicates that the
7 costs properly assignable to the contractor are greater
8 than what has been paid by the contractor, the contractor
9 shall be obligated to pay the remaining allocated costs.
10 The term of such additional repayment contract shall be
11 not less than one year and not more than 10 years, how-
12 ever, mutually agreeable provisions regarding the rate of
13 repayment of such amount may be developed by the par-
14 ties. In the event that the final cost allocation indicates
15 that the costs properly assignable to the contractor are
16 less than what the contractor has paid, the Secretary shall
17 credit such overpayment as an offset against any out-
18 standing or future obligation of the contractor.

19 (c) APPLICABILITY OF CERTAIN PROVISIONS.—

20 (1) EFFECT OF EXISTING LAW.—Upon a con-
21 tractor's compliance with and discharge of the obli-
22 gation of repayment of the construction costs pursu-
23 ant to a contract entered into pursuant to subsection
24 (a)(2)(A), subsections (a) and (b) of section 213 of

1 the Reclamation Reform Act of 1982 (96 Stat.
2 1269) shall apply to affected lands.

3 (2) EFFECT OF OTHER OBLIGATIONS.—The ob-
4 ligation of a contractor to repay construction costs
5 or other capitalized costs described in subsection
6 (a)(2)(B), (a)(3)(B), or (b) shall not affect a con-
7 tractor's status as having repaid all of the construc-
8 tion costs assignable to the contractor or the appli-
9 cability of subsections (a) and (b) of section 213 of
10 the Reclamation Reform Act of 1982 (96 Stat.
11 1269) once the amount required to be paid by the
12 contractor under the repayment contract entered
13 into pursuant to subsection (a)(2)(A) have been
14 paid.

15 (d) EFFECT ON EXISTING LAW NOT ALTERED.—Im-
16 plementation of the provisions of this title shall not alter—

17 (1) the repayment obligation of any water serv-
18 ice or repayment contractor receiving water from the
19 same water project, or shift any costs that would
20 otherwise have been properly assignable to the water
21 users' association identified in subsections (a)(1),
22 (a)(2), and (a)(3) absent this section, including op-
23 eration and maintenance costs, construction costs, or
24 other capitalized costs incurred after the date of the
25 enactment of this Act, or to other contractors; and

1 (2) specific requirements for the disposition of
2 amounts received as repayments by the Secretary
3 under the Act of June 17, 1902 (32 Stat. 388, chap-
4 ter 1093), and Acts supplemental to and amend-
5 atory of that Act (43 U.S.C. 371 et seq.).

6 (e) SURFACE WATER STORAGE ENHANCEMENT PRO-
7 GRAM.—

8 (1) IN GENERAL.—Except as provided in sub-
9 section (d)(2), three years following the date of en-
10 actment of this Act, no less than ____ percent of re-
11 ceipts generated from prepayment of contracts under
12 this section beyond amounts necessary to cover the
13 amount of receipts forgone from scheduled payments
14 under current law for the 10-year period following
15 the date of enactment of this Act shall be directed
16 to the Reclamation Surface Water Storage Account
17 under paragraph (2).

18 (2) SURFACE STORAGE ACCOUNT.—The Sec-
19 retary shall allocate amounts collected under para-
20 graph (1) into the “Reclamation Surface Storage
21 Account” to fund the construction of surface water
22 storage. The Secretary may also enter into coopera-
23 tive agreements with water users’ associations for
24 the construction of surface water storage and
25 amounts within the Surface Storage Account may be

1 used to fund such construction. Surface water stor-
2 age projects that are otherwise not federally author-
3 ized shall not be considered Federal facilities as a
4 result of any amounts allocated from the Surface
5 Storage Account for part or all of such facilities.

6 (3) REPAYMENT.—Amounts used for surface
7 water storage construction from the Account shall be
8 fully reimbursed to the Account consistent with the
9 requirements under Federal reclamation law (the
10 law (the Act of June 17, 1902 (32 Stat. 388, chap-
11 ter 1093))), and Acts supplemental to and amend-
12 atory of that Act (43 U.S.C. 371 et seq.) except that
13 all funds reimbursed shall be deposited in the Ac-
14 count established under paragraph (1).

15 (4) AVAILABILITY OF AMOUNTS.—Amounts de-
16 posited in the Account under this subsection shall—

17 (A) be made available in accordance with
18 this section, subject to appropriation; and

19 (B) be in addition to amounts appropriated
20 for such purposes under any other provision of
21 law.

22 (5) PURPOSES OF SURFACE WATER STORAGE.—
23 Construction of surface water storage under this sec-
24 tion shall be made for the following purposes:

1 (A) Increased municipal and industrial
2 water supply.

3 (B) Agricultural floodwater, erosion, and
4 sedimentation reduction.

5 (C) Agricultural drainage improvements.

6 (D) Agricultural irrigation.

7 (E) Increased recreation opportunities.

8 (F) Reduced adverse impacts to fish and
9 wildlife from water storage or diversion projects
10 within watersheds associated with water storage
11 projects funded under this section.

12 (G) Any other purposes consistent with
13 reclamation laws or other Federal law.

14 (f) DEFINITIONS.—For the purposes of this title, the
15 following definitions apply:

16 (1) ACCOUNT.—The term “Account” means the
17 Reclamation Surface Water Storage Account estab-
18 lished under subsection (e)(2).

19 (2) CONSTRUCTION.—The term “construction”
20 means the designing, materials engineering and test-
21 ing, surveying, and building of surface water storage
22 including additions to existing surface water storage
23 and construction of new surface water storage facili-
24 ties, exclusive of any Federal statutory or regulatory

1 obligations relating to any permit, review, approval,
2 or other such requirement.

3 (3) SURFACE WATER STORAGE.—The term
4 “surface water storage” means any federally owned
5 facility under the jurisdiction of the Bureau of Rec-
6 lamation or any non-Federal facility used for the
7 surface storage and supply of water resources.

8 (4) TREASURY RATE.—The term “Treasury
9 rate” means the 20-year Constant Maturity Treas-
10 ury (CMT) rate published by the United States De-
11 partment of the Treasury existing on the effective
12 date of the contract.

13 (5) WATER USERS’ ASSOCIATION.—The term
14 “water users’ association” means—

15 (A) an entity organized and recognized
16 under State laws that is eligible to enter into
17 contracts with reclamation to receive contract
18 water for delivery to and users of the water and
19 to pay applicable charges; and

20 (B) includes a variety of entities with dif-
21 ferent names and differing functions, such as
22 associations, conservatory district, irrigation
23 district, municipality, and water project con-
24 tract unit.

1 **TITLE X—SAFETY OF DAMS**

2 **SEC. 1001. AUTHORIZATION OF ADDITIONAL PROJECT BEN-**
3 **EFITS.**

4 The Reclamation Safety of Dams Act of 1978 is
5 amended—

6 (1) in section 3, by striking “Construction” and
7 inserting “Except as provided in section 5B, con-
8 struction”; and

9 (2) by inserting after section 5A (43 U.S.C.
10 509) the following:

11 **“SEC. 5B. AUTHORIZATION OF ADDITIONAL PROJECT BEN-**
12 **EFITS.**

13 “Notwithstanding section 3, if the Secretary deter-
14 mines that additional project benefits, including but not
15 limited to additional conservation storage capacity, are
16 feasible and not inconsistent with the purposes of this Act,
17 the Secretary is authorized to develop additional project
18 benefits through the construction of new or supplementary
19 works on a project in conjunction with the Secretary’s ac-
20 tivities under section 2 of this Act and subject to the con-
21 ditions described in the feasibility study, provided—

22 “(1) the Secretary determines that developing
23 additional project benefits through the construction
24 of new or supplementary works on a project will pro-

1 mote more efficient management of water and
2 water-related facilities;

3 “(2) the feasibility study pertaining to addi-
4 tional project benefits has been authorized pursuant
5 to section 8 of the Federal Water Project Recreation
6 Act of 1965 (16 U.S.C. 4601–18); and

7 “(3) the costs associated with developing the
8 additional project benefits are allocated to the au-
9 thorized purposes of the structure and repaid con-
10 sistent with all provisions of Federal Reclamation
11 law (the Act of June 17, 1902, 43 U.S.C. 371 et
12 seq.) and Acts supplemental to and amendatory of
13 that Act.”.

14 **TITLE XI—WATER RIGHTS** 15 **PROTECTION**

16 **SEC. 1101. SHORT TITLE.**

17 This title may be cited as the “Water Rights Protec-
18 tion Act”.

19 **SEC. 1102. DEFINITION OF WATER RIGHT.**

20 In this title, the term “water right” means any sur-
21 face or groundwater right filed, permitted, certified, con-
22 firmed, decreed, adjudicated, or otherwise recognized by
23 a judicial proceeding or by the State in which the user
24 acquires possession of the water or puts the water to bene-

1 ficial use, including water rights for federally recognized
2 Indian tribes.

3 **SEC. 1103. TREATMENT OF WATER RIGHTS.**

4 The Secretary of the Interior and the Secretary of
5 Agriculture shall not—

6 (1) condition or withhold, in whole or in part,
7 the issuance, renewal, amendment, or extension of
8 any permit, approval, license, lease, allotment, ease-
9 ment, right-of-way, or other land use or occupancy
10 agreement on—

11 (A) limitation or encumbrance of any
12 water right, or the transfer of any water right
13 (including joint and sole ownership), directly or
14 indirectly to the United States or any other des-
15 ignee; or

16 (B) any other impairment of any water
17 right, in whole or in part, granted or otherwise
18 recognized under State law, by Federal or State
19 adjudication, decree, or other judgment, or pur-
20 suant to any interstate water compact;

21 (2) require any water user (including any feder-
22 ally recognized Indian tribe) to apply for or acquire
23 a water right in the name of the United States
24 under State law as a condition of the issuance, re-
25 newal, amendment, or extension of any permit, ap-

1 proval, license, lease, allotment, easement, right-of-
2 way, or other land use or occupancy agreement;

3 (3) assert jurisdiction over groundwater with-
4 drawals or impacts on groundwater resources, unless
5 jurisdiction is asserted, and any regulatory or policy
6 actions taken pursuant to such assertion are, con-
7 sistent with, and impose no greater restrictions or
8 regulatory requirements than, applicable State laws
9 (including regulations) and policies governing the
10 protection and use of groundwater resources; or

11 (4) infringe on the rights and obligations of a
12 State in evaluating, allocating, and adjudicating the
13 waters of the State originating on or under, or flow-
14 ing from, land owned or managed by the Federal
15 Government.

16 **SEC. 1104. RECOGNITION OF STATE AUTHORITY.**

17 (a) IN GENERAL.—In carrying out section 3, the Sec-
18 retary of the Interior and the Secretary of Agriculture
19 shall—

20 (1) recognize the longstanding authority of the
21 States relating to evaluating, protecting, allocating,
22 regulating, and adjudicating groundwater by any
23 means, including a rulemaking, permitting, directive,
24 water court adjudication, resource management
25 planning, regional authority, or other policy; and

1 (2) coordinate with the States in the adoption
2 and implementation by the Secretary of the Interior
3 or the Secretary of Agriculture of any rulemaking,
4 policy, directive, management plan, or other similar
5 Federal action so as to ensure that such actions are
6 consistent with, and impose no greater restrictions
7 or regulatory requirements than, State groundwater
8 laws and programs.

9 (b) EFFECT ON STATE WATER RIGHTS.—In carrying
10 out this Act, the Secretary of the Interior and the Sec-
11 retary of Agriculture shall not take any action that ad-
12 versely affects—

13 (1) any water rights granted by a State;

14 (2) the authority of a State in adjudicating
15 water rights;

16 (3) definitions established by a State with re-
17 spect to the term “beneficial use”, “priority of water
18 rights”, or “terms of use”;

19 (4) terms and conditions of groundwater with-
20 drawal, guidance and reporting procedures, and con-
21 servation and source protection measures established
22 by a State;

23 (5) the use of groundwater in accordance with
24 State law; or

1 (6) any other rights and obligations of a State
2 established under State law.

3 **SEC. 1105. EFFECT OF TITLE.**

4 (a) EFFECT ON EXISTING AUTHORITY.—Nothing in
5 this title limits or expands any existing legally recognized
6 authority of the Secretary of the Interior or the Secretary
7 of Agriculture to issue, grant, or condition any permit, ap-
8 proval, license, lease, allotment, easement, right-of-way, or
9 other land use or occupancy agreement on Federal land
10 subject to the jurisdiction of the Secretary of the Interior
11 or the Secretary of Agriculture, respectively.

12 (b) EFFECT ON RECLAMATION CONTRACTS.—Noth-
13 ing in this title interferes with Bureau of Reclamation con-
14 tracts entered into pursuant to the reclamation laws.

15 (c) EFFECT ON ENDANGERED SPECIES ACT.—Noth-
16 ing in this title affects the implementation of the Endan-
17 gered Species Act of 1973 (16 U.S.C. 1531 et seq.).

18 (d) EFFECT ON FEDERAL RESERVED WATER
19 RIGHTS.—Nothing in this title limits or expands any exist-
20 ing or claimed reserved water rights of the Federal Gov-
21 ernment on land administered by the Secretary of the In-
22 terior or the Secretary of Agriculture.

23 (e) EFFECT ON FEDERAL POWER ACT.—Nothing in
24 this title limits or expands authorities under sections 4(e),

1 10(j), or 18 of the Federal Power Act (16 U.S.C. 797(e),
2 803(j), 811).

3 (f) EFFECT ON INDIAN WATER RIGHTS.—Nothing in
4 this title limits or expands any water right or treaty right
5 of any federally recognized Indian tribe.

○

From: Weaver, Kiel
Sent: Wednesday, July 8, 2015 12:30 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org)
CC: Johnny Amaral (jamaral@westlandswater.org); David Bernhardt
Subject: FW: Democratic Points Republican Counterpoints on California Provisions HR 2898
Attachments: Democratic Points Republican Counterpoints on California Provisions HR 2898.doc

From: Weaver, Kiel
Sent: Wednesday, July 08, 2015 11:42 AM
To: Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Lombardi, Kyle; Berenter, Alexandra; Nelson, Damon; Butler, Jessica
Cc: Wong, Bryson; Raab, Lawrence
Subject: Democratic Points Republican Counterpoints on California Provisions HR 2898

All,

We are working on the point-counterpoints for the West-wide portions of the bill. We wrote these point/counterpoint topics for the CA portion and ask that you all take a stab at them and get back to us by 2pm. There inevitably may be more topics but this is what we came up:

Democratic Point: This is another giveaway to corporate agriculture in the San Joaquin Valley
Counterpoints

—
Democrat Point: This robs Peter to pay Paul. Northern California and the delta will suffer because of the water diversions to southern California
Counterpoints:

—
Democrat point: This will be a fish extinction bill
Counterpoints:

—
Democrat Point: This bill overrides federal ESA.
Counterpoints:

—
Democrat Point: This repeals a legal settlement entered into by irrigators and the Bush Administration, opening the region up for more litigation and uncertainty.
Counterpoints:

—
Democrat Point: This bill pre-empts state law
Counterpoints:

—
Democratic Point: There has not been a deliberative process on this bill
Counterpoints:

—
Democratic Point: This bill trumps science
Counterpoints:

—
Democrat Point: Same movie as before. This bill is not serious
Counterpoints:

Democratic Point: This is another giveaway to corporate agriculture in the San Joaquin Valley

Counterpoints

—

Democrat Point: This robs Peter to pay Paul. Northern California and the delta will suffer because of the water diversions to southern California

Counterpoints:

—

Democrat point: This will be a fish extinction bill

Counterpoints:

—

Democrat Point: This bill overrides federal ESA.

Counterpoints:

—

Democrat Point: This repeals a legal settlement entered into by irrigators and the Bush Administration, opening the region up for more litigation and uncertainty.

Counterpoints:

—

Democrat Point: This bill pre-empts state law

Counterpoints:

—

Democratic Point: There has not been a deliberative process on this bill

Counterpoints:

—

Democratic Point: This bill trumps science

Counterpoints:

—

Democrat Point: Same movie as before. This bill is not serious

Counterpoints:

From: Petersen, Scott

Sent: Wednesday, July 8, 2015 1:28 PM

To: Thomas Birmingham; David Longly Bernhardt; Johnny Amaral; Joe Raeder; Nancy Williams; Brent Walthall; Steve Chedester; Ara Azhderian; Ricardo Ortega

Subject: Fwd: doi views letter on hr 2898

Attachments: views ltr hr 2898.pdf; ATT00001.htm

Sent from my iPhone, with brevity...

Begin forwarded message:

From: "Maucieri, Mathew" <mmaucieri@usbr.gov>

Date: July 8, 2015 at 3:59:09 PM EDT

To: "Jessica Butler (Valadao)" <jessica.butler@mail.house.gov>, "Petersen, Scott" <scott.petersen@mail.house.gov>, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov>, "Muirragui, Matthew" <Matthew.Muirragui@mail.house.gov>

Cc: Jeremy Bratt <jeremy_bratt@ios.doi.gov>, Ann Adler <aadler@usbr.gov>

Subject: doi views letter on hr 2898

all,
see attached. please circulate as you see fit.
thx
mat

--

Mathew Maucieri

Bureau of Reclamation

U.S. Department of the Interior

202.513.0569 desk

202.277.4934 cell



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUL 07 2015

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Chairman Bishop:

The Department of the Interior (Department) opposes H.R. 2898. It fails to equitably address critical elements of California's complex water challenges and will, if enacted, have the unintended consequence of impeding an effective and timely response to the continuing drought while providing no additional water to hard hit communities.

We acknowledge and appreciate the desire of the authors to provide relief to the working families in the agricultural community who are impacted by this historic drought. The Department shares in this concern, and over the past few years, Federal and State agencies have taken unprecedented actions to collaboratively manage the Central Valley Project (CVP) and the State Water Project (SWP) on a real-time basis. This allows maximized water delivery while also ensuring health and human safety standards are met, salinity controls are achieved, and the minimum conditions necessary for survival of endangered and threatened fish and wildlife are attained. The result has been a significant savings of water, approximately 400,000 acre-feet this year through the end of May, significantly increasing the amount of water available for municipal and agricultural uses compared to that which would have otherwise been available.

In light of our operational experiences, we have reviewed H.R. 2898 and are of the view that this bill will not provide additional meaningful relief to those most affected by the drought. It will, however, negatively impact our ability to protect Delta fish and wildlife in the long-term; particularly those species listed under Federal and State endangered species laws.

Instead of increasing water supplies, H.R. 2898 dictates operational decisions and imposes an additional new legal standard. Instead of saving water, this could actually limit water supplies by creating new and confusing conflicts with existing laws, thereby adding an unnecessary layer of complexity to Federal and State project operations. As a result of this additional standard, we believe H.R. 2898 will slow decision-making, generate significant litigation, and limit the real-time operational flexibility that is so critical to maximizing water delivery. It also contains internal conflicts by stating its consistency with the Endangered Species Act (ESA) while directing specific operations that appear inconsistent with the ESA, thereby resulting in conditions that could be detrimental to listed species.

Much of the bill also contains provisions that have little connection to the on-going drought. The bill includes language constraining the Administration's ability to protect the commercial and tribal fishery on the Trinity and Klamath Rivers, which will have impacts not just in California

but throughout the west coast. Another problematic section of the bill elevates and prioritizes certain water rights holders within the California water rights system, thereby creating different classes of water users, which further limits operational flexibility, and intrudes upon State administration of water rights. The bill also repeals the San Joaquin River Restoration Settlement Act, including a troubling provision that expressly preempts State water law. In addition, the repeal will further complicate operations on the San Joaquin River by increasing the likelihood of further litigation and undermining the improvements that are important to achieve a critical balance between water development and the environment. Such provisions are not related to ameliorating the impacts of drought but instead create conflict among Californians, raise issues in neighboring states, and ultimately detract from our ability to provide meaningful support during this difficult crisis.

In addition to these problematic sections, the Department has concerns with several provisions that affect the use of tax-payer provided funds. The bill seeks to penalize the Bureau of Reclamation for failure to finalize certain reports without recognizing there are external factors contributing to these delays. These financial penalty provisions could potentially limit Reclamation's ability to address resources issues in other western states. There are also several provisions that perpetuate the historical Federal subsidies available for financing water storage projects through the Bureau of Reclamation. These financing terms are no longer appropriate given limited budgets and other available financing mechanisms.

The Department is of the view that the drought must be addressed through a multi-pronged approach that considers impacts in the short-term as well as providing long-term drought resiliency. In addition to the unprecedented use of operational flexibility and real-time management of the CVP and SWP, the Federal and State governments are continuing very aggressive and tightly coordinated efforts to assist those most affected by drought. The U.S. Department of Agriculture has directed millions of dollars in food, conservation, and emergency water assistance to tens of thousands of residents in areas hardest hit by drought. The Bureau of Reclamation has provided cost-share assistance for nine water reuse projects in the State as well as millions of dollars in grants to promote conservation efforts and long-term resiliency to drought. We must also move beyond the traditional water storage construction paradigm with more emphasis on Federal participation in state and locally driven projects, especially in those states like California, that have made substantial funding available for such projects.

Although the Department opposes H.R. 2898, there are a number of provisions in the bill that could provide a framework for further discussions. These include provisions intended to build upon the agencies' current actions to improve data gathering, monitoring, and scientific methodologies in a manner that benefits real-time operations. Continued progress in the areas of conservation, habitat restoration, and infrastructure improvements can also provide the basis for cooperative efforts. These strategies have been enhanced in recent years as a result of funding increases provided by the Administration and Congress. Progress in this area, however, will be seriously undermined by the sequestration levels of funding currently being contemplated by Congress. Cutting budgets while calling for more investments in science, equipment, and infrastructure is not a workable strategy.

As a final matter, it should be noted that without a hearing or meaningful opportunity for the Administration, the State of California, or the public to review and provide detailed comments on the bill, it will be very hard to engage constructively on key concepts that merit further discussion. One of my takeaways from time spent in California, meeting with those most affected by the drought, is the strong desire that exists for the Administration, Congress, and the State to work collaboratively to find meaningful relief from its devastating effects. The Department stands ready to work with the Congress and the State of California to further strengthen our comprehensive response to the continuing drought.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael L. Connor', written in a cursive style.

Michael L. Connor

cc. The Honorable Raúl M. Grijalva
Ranking Member, Committee on Natural Resources

From: Weaver, Kiel

Sent: Wednesday, July 8, 2015 2:41 PM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); Johnny Amaral (jamaral@westlandswater.org); David Bernhardt

Subject: FW: Notes from opening Statements

This is a summary of the Huffman and Napolitano statements today.

Most of it is recycled stuff, but I do think we need to have responses for the three things highlighted. Any way you can these three to the list of points/counterpoints? Thank you

From: Raab, Lawrence

Sent: Wednesday, July 08, 2015 5:35 PM

To: Weaver, Kiel; Wong, Bryson

Subject: Notes from opening Statements

Huffman Statement:

- HR 2898 undermines and micromanages state water laws, infringes on tribal rights, and disregards keystone environmental laws.
- This bill was crafted behind closed doors and the authors failed to consult with the minority party, affected industry such as fisherman, the State of California, or the Administration which in the past has opposed similar legislation.
- This bill redistributes California water to corporate farms and reignites the California water war pitting North vs South.
- The majority attempts to use the loss of jobs in the agricultural industry as the need for such immediate legislation, but the loss of Ag jobs was not nearly as severe as originally thought and agricultural employment is beginning to rise.
- Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.
- HR 2898 does nothing to help farmers as opposed to Huffman's draft which spends \$25 million dollars for relief to farm workers.
- This bill does nothing to address the billions of gallons of water lost each year because of a crumbling infrastructure.
- This bill does nothing to solve California's water problems and defies court ordered restorations projects such as San Joaquin.
- We could have invited witnesses if we had a hearing, but the majority wanted to shut out the public from this process.

Napolitano Statement:

- Does nothing to bring new water to California
- Takes more Delta water and redistributes it to Central California
- Section 501 provides false protections to southern Californians with entitled water rights.
- Haven't had a comprehensive hearing on this issue since 2011
- This bill is not supported by our state's senators, the Governor of California, nor the Administration.

Lawrence Allen Raab, Esq., MPA

Counsel

Subcommittee on Water, Power, and Oceans

Natural Resources Committee

U.S. House of Representatives

1522 Longworth House Office Building

Washington, DC 20515

Phone: (202) [REDACTED] [REDACTED]

From: Johnny Amaral
Sent: Wednesday, July 8, 2015 2:48 PM
To: Weaver, Kiel
CC: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Subject: Re: Notes from opening Statements

This is what i sent to Tom a bit ago. Number one touches on the idiocy of the statement you highlighted

Ways to address the Huffman garbage

1.How many lost jobs is an acceptable number if claims in the findings of the House bill are exaggerated?

Is 10,000 unemployed farm workers a better more acceptable number? 20,000??

2. Choosing not to be a constructive participant in negotiations doesnt mean the negotiations were done in secret.

3. 2million AF lost to biops in 3 years. That is NOT a matter if dispute.

Best,

Johnny Amaral

On Jul 8, 2015, at 5:40 PM, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov> wrote:

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Most of it is recycled stuff, but I do think we need to have responses for the three things highlighted. Any way you can these three to the list of points/counterpoints? Thank you

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Lawrence Allen Raab, Esq., MPA

Counsel

Subcommittee on Water, Power, and Oceans

Natural Resources Committee

U.S. House of Representatives

1522 Longworth House Office Building

Washington, DC 20515

Phone: (202) [REDACTED] [REDACTED]

From: Tom Birmingham
Sent: Wednesday, July 8, 2015 4:32 PM
To: 'Weaver, Kiel'
CC: 'Johnny Amaral'; 'David Bernhardt'
Subject: RE: Democratic Points Republican Counterpoints on California Provisions HR 2898
Attachments: Democratic Points Republican Counterpoints on California Provisions HR 2898.doc

Kiel,
Attached are my suggested responses to the points anticipated from opponents to HR2892. Please let me know if these responses are consistent with what you had in mind and what else I can do to help.
Tom

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]
Sent: Wednesday, July 8, 2015 12:30 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org)
Cc: Johnny Amaral (jamaral@westlandswater.org); David Bernhardt
Subject: FW: Democratic Points Republican Counterpoints on California Provisions HR 2898

From: Weaver, Kiel
Sent: Wednesday, July 08, 2015 11:42 AM
To: Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Lombardi, Kyle; Berenter, Alexandra; Nelson, Damon; Butler, Jessica
Cc: Wong, Bryson; Raab, Lawrence
Subject: Democratic Points Republican Counterpoints on California Provisions HR 2898

All,

We are working on the point-counterpoints for the West-wide portions of the bill. We wrote these point/counterpoint topics for the CA portion and ask that you all take a stab at them and get back to us by 2pm. There inevitably may be more topics but this is what we came up:

Democratic Point: This is another giveaway to corporate agriculture in the San Joaquin Valley
Counterpoints

—
Democrat Point: This robs Peter to pay Paul. Northern California and the delta will suffer because of the water diversions to southern California
Counterpoints:

—
Democrat point: This will be a fish extinction bill
Counterpoints:

—
Democrat Point: This bill overrides federal ESA.
Counterpoints:

—
Democrat Point: This repeals a legal settlement entered into by irrigators and the Bush Administration, opening the region up for more litigation and uncertainty.
Counterpoints:

—

Democrat Point: This bill pre-empts state law

Counterpoints:

—

Democratic Point: There has not been a deliberative process on this bill

Counterpoints:

—

Democratic Point: This bill trumps science

Counterpoints:

—

Democrat Point: Same movie as before. This bill is not serious

Counterpoints:

Democratic Point: This is another giveaway to corporate agriculture in the San Joaquin Valley

Counterpoints

People in virtually every region of California, including the Sacramento Valley, the San Francisco Bay area (Silicon Valley), the San Joaquin Valley, and southern California, have been affected by application of the Endangered Species Act to operations of the Central Valley Project and the California State Water project. It is true that larger farming interests in the San Joaquin Valley will be benefited by this bill, but small family farmers in the Sacramento Valley, who this year have received a zero allocation because of restrictions imposed on operations of the Central Valley Project by the biological opinions, will benefit from the enactment of this bill. In addition, residents and businesses in the Silicon Valley and residents and businesses in southern California, from the Los Angeles basin to San Diego, will benefit from enactment of this bill. Cosponsors of this legislation represent areas of California from the Oregon border to the Inland Empire in southern California. These members would not put the water supply of their constituents at risk merely to provide a benefit to a single industry in the San Joaquin Valley.

—

Democrat Point: This robs Peter to pay Paul. Northern California and the delta will suffer because of the water diversions to southern California

Counterpoints:

This bill contains specific protections for water users in areas of origin in northern California, and the operational flexibility for the Central Valley Project resulting from the enactment of this legislation will benefit water users in the most northern regions of the State. As it relates to the Delta, this legislation requires that Central Valley Project and State Water Project Delta operations be based on the best scientific and commercial data available. —

Democrat point: This will be a fish extinction bill

Counterpoints:

The legislation specifically preserves the discretion of the Secretary of the Interior and the Secretary of Commerce to take actions necessary to avoid jeopardy to listed species. But it does more. It requires that federal agencies take additional actions, like controlling the impact predation by exotic species on listed species, to provide improved protection for listed species. No one can reasonably assert that the existing regulatory programs are benefiting either at risk species or people. Notwithstanding millions of acre-feet being dedicated to the protection of these species over the last decade, the species are near extinction. And the human cost of these supposedly protective actions has been catastrophic.

—

Democrat Point: This bill overrides federal ESA.

Counterpoints:

There is nothing in this bill that overrides the Endangered Species Act. To the contrary, the water project operations contemplated by this legislation are permitted under the existing biological opinions. Boiled down to its essence, this bill merely requires that before federal agencies take an action under the biological opinions to restrict water project operations within the limits prescribed by the biological opinions they consider the water supply impacts of their decisions, document the basis of their decisions, and only impose the restriction if they conclude the restriction is required to avoid jeopardizing the continued existence of the species.

Democrat Point: This repeals a legal settlement entered into by irrigators and the Bush Administration, opening the region up for more litigation and uncertainty.

Counterpoints:

The San Joaquin River Settlement had laudable goals. But since its authorization, a number of things have changed. First, the cost of the San Joaquin River restoration program has increased significantly, from \$800 thousand, to more than \$1.2 billion dollars. In the current budget climate, this program is simply unaffordable. But of greater importance, estimates of impacts associated with climate change suggest that the program will fail in its goal of restoring a salmon run to the San Joaquin River. Members on both sides of the aisle believe that the time has come to abandon this program because of its futility and devote the resources that otherwise would be spent on the San Joaquin River restoration program to other areas where there is a greater likelihood that salmon restoration efforts will benefit the salmon fishery.

Democrat Point: This bill pre-empts state law

Counterpoints:

Section 505 of the bill specifically provides that nothing in the Act preempts any existing obligation the Central Valley Project to operate in conformity with State law, including water right priorities.

Democratic Point: There has not been a deliberative process on this bill

Counterpoints:

Democratic Point: This bill trumps science

Counterpoints:

This argument is belied by sections 102, 103, and 202 of the bill. These and other sections of the bill require that decisions made under the Endangered Species Act concerning operations of the Central Valley Project and the State Water Project be based on the most recent and best scientific and commercial data available. The bill does not trump science; it promotes the use of good science on an ongoing basis.

—

Democrat Point: Same movie as before. This bill is not serious

Counterpoints:

The provisions of this bill concerning the application of the Endangered Species Act to operations of the Central Valley Project and State Water Project are based on extensive negotiations between members of the House and members of the Senate, from both sides of the aisle that occurred during the summer and fall of 2014. Those provisions represent the hard work performed by members of the House and Senator Dianne Feinstein to craft a bill that would provide a reasonable balance between efforts to supply water and protect listed species. No one in the House that supports this bill believes that it will be enacted into law, but rather, it will serve as a good basis to resume negotiations with members of the Senate.

From: Weaver, Kiel
Sent: Wednesday, July 8, 2015 4:34 PM
To: 'Tom Birmingham'
CC: 'Johnny Amaral'; 'David Bernhardt'
Subject: RE: Democratic Points Republican Counterpoints on California Provisions HR 2898

Thank you!

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Wednesday, July 08, 2015 7:32 PM
To: Weaver, Kiel
Cc: 'Johnny Amaral'; 'David Bernhardt'
Subject: RE: Democratic Points Republican Counterpoints on California Provisions HR 2898

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Sent: Wednesday, July 08, 2015 11:42 AM
To: Larrabee, Jason; Tudor, Chris; Eastman, Kevin; Lombardi, Kyle; Berenter, Alexandra; Nelson, Damon; Butler, Jessica
Cc: Wong, Bryson; Raab, Lawrence
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Counterpoints:

Democrat Point: Same movie as before. This bill is not serious

Counterpoints:

From: Tom Birmingham
Sent: Thursday, July 9, 2015 5:01 AM
To: 'Weaver, Kiel'
CC: 'David Bernhardt'; 'Johnny Amaral'
Subject: Graphic
Attachments: Delta_Inflows_and_Exports_Fact_Sheet.pdf

Kiel,

Attached is the graphic prepared by the California Department of Water Resources comparing Delta inflow to exports for the period from December 1, 2012 – January 31, 2013. During this period the projects lost more than 800,000 acre-feet because of restrictions imposed on reverse flow in Old and Middle Rivers under the smelt biological opinion.

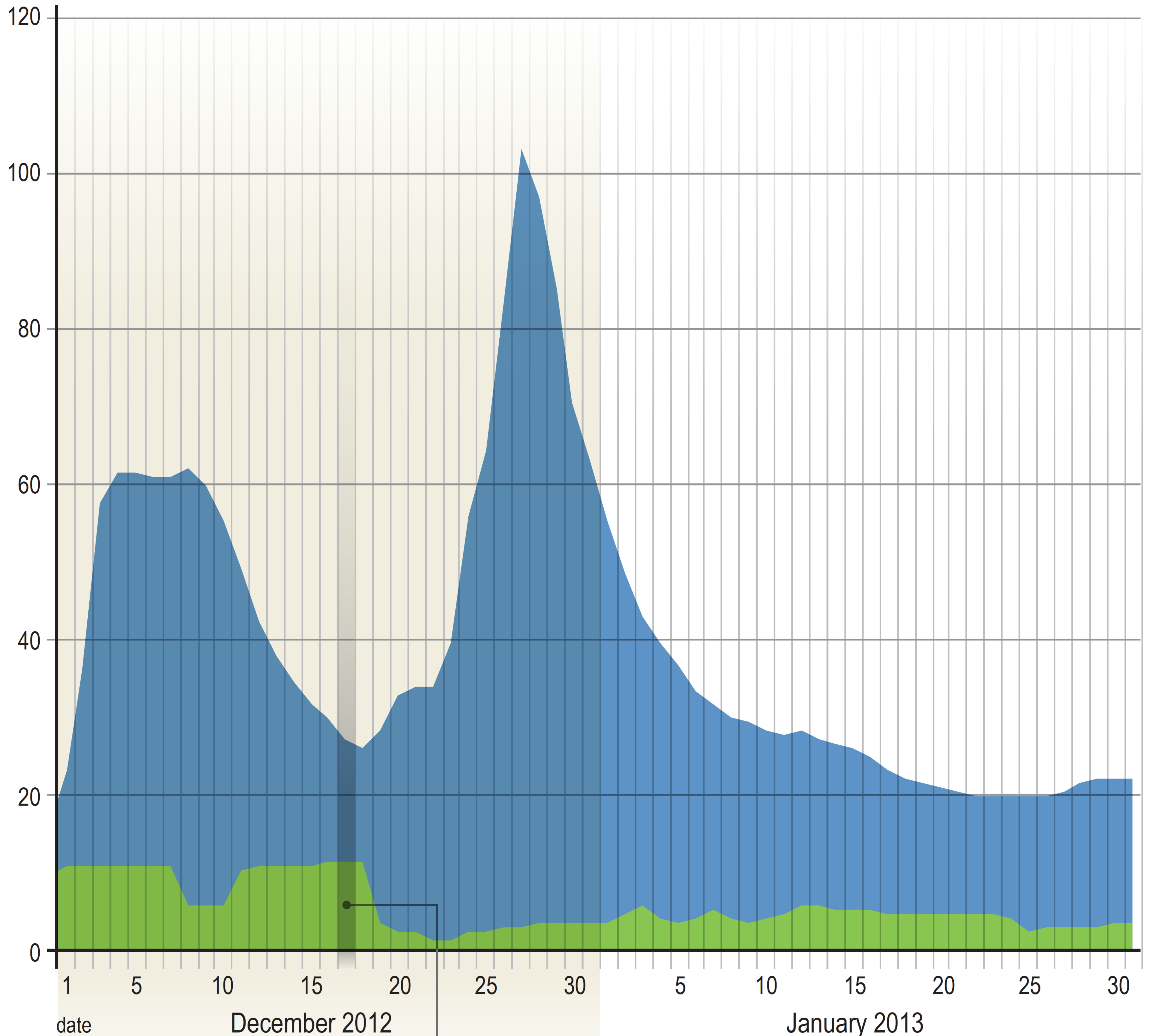
Tom

Delta Inflows and Water Project Exports

December 1, 2012 – January 31, 2013

thousands
of cubic feet
per second

Water moving into the Delta Delta and state water project exports from the Delta



December 17: First of seven derations from U.S. Fish and Wildlife Service to reduce reverse flows near pumping plants

From: Tom Birmingham
Sent: Thursday, July 9, 2015 5:42 AM
To: 'Weaver, Kiel'
CC: 'David Bernhardt'; 'Johnny Amaral'
Subject: Facts are Stubborn Things

Kiel,

Yesterday Jared Huffman said "facts are stubborn things" and went on to say that the smelt biological opinion has not constrained operations of the projects since 2013. Mr. Huffman is correct that facts are stubborn things, be he wants to ignore the facts. In fact, the smelt biological opinion restrained operations in January and February 2015. As an example, below is email from Reclamation ordering a reduction in pumping in February because of "Delta smelt concerns."

Moreover, Mr. Huffman did not mention impacts of the salmonid biological opinion. In 2015, the biological opinions have cost the two projects more than 476,000 acre-feet.

Tom

From: "Kiteck, Elizabeth" <ekiteck@usbr.gov>
Date: February 22, 2015 at 11:03:16 AM PST
To: "Anderson, Craig" <Craig_Anderson@fws.gov>, "Anderson, Larry D" <LDAnderson@usbr.gov>, "Arroyave, Pablo R" <PArroyave@usbr.gov>, "Barngraff, Gerald W (Jerry)" <GBarngraff@usbr.gov>, "Bartoo, Aondrea" <Aondrea_Bartoo@fws.gov>, "Boardman, Tom" <tboardman@apex.net>, "BOR CVO-400 EMPLOYEES" <IBR2CVO400@usbr.gov>, "BOR CVO-650 EMPLOYEES" <IBR2CVO650@usbr.gov>, "BOR MPR All Public Affairs Employees MP-140" <IBR2MPRDALLPAO@usbr.gov>, "Bridges, Brent" <BBridges@usbr.gov>, "Buelna, Kiti" <kbuelna@westlandswater.org>, "Chu, Andy" <andychu@water.ca.gov>, "Giorgi, Bryant" <bgiorgi@water.ca.gov>, "Godina, Armando J" <AGodina@usbr.gov>, "Greene, Sheila" <sgreene@westlandswater.org>, "Guinee, Roger" <Roger_Guinee@fws.gov>, "Gutierrez, Jose" <jgutierrez@westlandswater.org>, "Herrick, John" <jherrlaw@aol.com>, "Hilts, Derek" <Derek_Hilts@fws.gov>, "Holman, Gayle" <gholman@westlandswater.org>, "Hunt, Shane D" <SHunt@usbr.gov>, "Imai, Joel A" <JImai@usbr.gov>, "Jeffrey Rieker" <jrieker@usbr.gov>, "Johnson, Paul L" <pjohnson@usbr.gov>, "Kabat, Tom" <Tom.Kabat@cityofpaloalto.org>, "Kiteck, Elizabeth G" <EKiteck@usbr.gov>, "Leahigh, John" <leahigh@water.ca.gov>, "LeBlanc, David E" <DLeblanc@usbr.gov>, "Lee, Chauncey" <chauncey.lee@sldmwa.org>, "Merriweather, Audrey" <amerrweather@usbr.gov>, "MICHAEL JACKSON" <MJACKSON@usbr.gov>, "Miller, Aaron" <miller@water.ca.gov>, "Milligan, Ronald E" <RMilligan@usbr.gov>, "Mizuno, Frances" <frances.mizuno@sldmwa.org>, "Murillo, David" <dmurillo@usbr.gov>, "Murillo, Richard (Rich)" <RMurillo@usbr.gov>, "Nash, M L (ML)" <MNash@usbr.gov>, "Ngo, Vinh H" <VNgo@usbr.gov>, "OCO Export Management Group-DWR" <OCO_Export_Management@water.ca.gov>, "Peltier, Jason" <jpeltier@westlandswater.org>, "Pettit, Tracy" <pettit@water.ca.gov>, "Reyes, Rene" <RReyes@usbr.gov>, "Rhodes, Mark" <mrhodes@westlandswater.org>, "Ridenour, Diana G" <DRidenour@usbr.gov>, "Sandhu, Amerit" <asandhu@water.ca.gov>, "Schultz, Andrew A" <ASchultz@usbr.gov>, "Shahcheraghi, Reza" <rezas@water.ca.gov>, "Silva, Ronald G. (Ron)" <RSilva@usbr.gov>, "Singh, Amardeep" <amardeep@water.ca.gov>, "Smith, Stacey M" <StaceySmith@usbr.gov>, "Smith, William D (Bill)" <WDSMITH@usbr.gov>, "Snow, Jim" <jsnow@westlandswater.org>, "SNR Group" <SNR_RTMerchant@wapa.gov>, "Somera, Edward" <edward.somera@parks.ca.gov>, "Stearns, Paul" <paul.stearns@sldmwa.org>, "Tracy PP Control Operators" <control.operations@sldmwa.org>, "Tran, Loi" <ltran@water.ca.gov>, "Turner, Kim" <Kim_S_Turner@fws.gov>, "Van Nieuwenhuyse, Erwin E" <EVanNieuwenhuyse@usbr.gov>, "WAPA-Group" <SNR_RSC@wapa.gov>, "White, Molly" <mwhite@water.ca.gov>, "Wilbur, Ryan" <rwilbur@water.ca.gov>, "Woolf, Sarah" <[REDACTED]@[REDACTED]>, "Wu, Brandon" <BWu@usbr.gov>, "Yamanaka, Dan" <dany@water.ca.gov>, "Yin, Wenli" <wyyin@water.ca.gov>, "Yip, Garwin"

<garwin.yip@noaa.gov>

Subject: Change Order - Jones Pumping Plant

At about 1030 on Sunday, Feb. 22, 2015 please drop the large unit and target a pumping rate with the remaining unit of approx. 850 cfs.

Comment: Delta smelt concerns

Issued by: Liz Kiteck

From: Weaver, Kiel

Sent: Thursday, July 9, 2015 6:53 AM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; Nelson, Damon

Subject: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

Attachments: HR 2898 Grijalva #1.pdf

AMENDMENT TO H.R. 2898

OFFERED BY ~~MR. HUFFMAN~~ OF ~~CALIFORNIA~~
Mr. Grijalva Arizona

Page 8, strike lines 12 through 16.



From: Tom Birmingham
Sent: Thursday, July 9, 2015 7:17 AM
To: Bernhardt, David L.
CC: Kiel Weaver
Subject: Quote

9th circuit majority statement regarding CVP

We recognize the enormous practical implications of this decision. But the consequences were prescribed when Congress determined that “these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). As the Supreme Court observed in *Tennessee Valley Authority v. Hill*: “It may seem curious to some that the survival of a relatively small number of three-inch fish . . . would require the permanent halting of a virtually completed dam,” but “the explicit provisions of the Endangered Species Act require precisely that result.” 437 U.S. 153, 172–73 (1978). Such species have been “afforded the highest of priorities,” by Congress, even if it means “the sacrifice of the anticipated benefits of the project and of many millions of dollars in public funds.” *Id.* at 174 (footnote omitted). The law prohibits us from making “such fine utilitarian calculations” to balance the smelt’s interests against the interests of the citizens of California. *Id.* at 187. Consequently, any other “[r]esolution of these fundamental policy questions” about the allocation of water resources in California “lies . . . with Congress and the agencies to which Congress has delegated authority, as well as with state legislatures and, ultimately, the populace as a whole.” *Baltimore Gas & Elec.*, 462 U.S. at 97. Sent from my iPhone

From: Nelson, Damon

Sent: Thursday, July 9, 2015 7:34 AM

To: Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt

Subject: RE: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

I'm trying to find the quote.

From: Weaver, Kiel

Sent: Thursday, July 09, 2015 9:53 AM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; Nelson, Damon

Subject: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

From: Bernhardt, David L.

Sent: Thursday, July 9, 2015 7:38 AM

To: Nelson, Damon

CC: Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org)

Subject: Re: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

Damon potential response:

The amendment should be opposed. The responsibility and the consequences for the law rest with Congress, this is a long held understanding of the Courts. In fact, the Ninth Circuit specifically stated so, when evaluating the application of the ESA to the Central Valley Project. Here is what the court said,

"We recognize the enormous practical implications of this decision. But the consequences were prescribed when Congress determined that "these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." 16 U.S.C. § 1531(a)(3). As the Supreme Court observed in *Tennessee Valley Authority v. Hill*: "It may seem curious to some that the survival of a relatively small number of three-inch fish . . . would require the permanent halting of a virtually completed dam," but "the explicit provisions of the Endangered Species Act require precisely that result." 437 U.S. 153, 172–73 (1978). Such species have been "afforded the highest of priorities," by Congress, even if it means "the sacrifice of the anticipated benefits of the project and of many millions of dollars in public funds." *Id.* at 174 (footnote omitted). The law prohibits us from making "such fine utilitarian calculations" to balance the smelt's interests against the interests of the citizens of California. *Id.* at 187. Consequently, any other "[r]esolution of these fundamental policy questions" about the allocation of water resources in California "lies . . . with Congress and the agencies to which Congress has delegated authority, as well as with state legislatures and, ultimately, the populace as a whole." *Baltimore Gas & Elec.*, 462 U.S."

David Bernhardt

On Jul 9, 2015, at 10:34 AM, Nelson, Damon <Damon.Nelson@mail.house.gov> wrote:

I'm trying to find the quote.

From: Weaver, Kiel

Sent: Thursday, July 09, 2015 9:53 AM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; Nelson, Damon

Subject: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Nelson, Damon
Sent: Thursday, July 9, 2015 7:41 AM
To: Bernhardt, David L.
CC: Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org)
Subject: RE: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

Perfect. Thank you. I was just about to read the 9th Circuit opinion. You beat me to it.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Thursday, July 09, 2015 10:38 AM
To: Nelson, Damon
Cc: Weaver, Kiel; Birmingham, Thomas (tbirmingham@westlandswater.org)
Subject: Re: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

Damon potential response:

The amendment should be opposed. The responsibility and the consequences for the law rest with Congress, this is a long held understanding of the Courts. In fact, the Ninth Circuit specifically stated so, when evaluating the application of the ESA to the Central Valley Project. Here is what the court said,

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David Bernhardt

On Jul 9, 2015, at 10:34 AM, Nelson, Damon <Damon.Nelson@mail.house.gov> wrote:

I'm trying to find the quote.

From: Weaver, Kiel
Sent: Thursday, July 09, 2015 9:53 AM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; Nelson, Damon
Subject: see attached....Grijalva is striking the finding that says amending ESA is the responsibility of Congress. Didn't Judge Wanger say that his hands are tied and that only Congress can fix the ESA? do we have access to that quote?

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From: Tom Birmingham
Sent: Friday, July 10, 2015 4:26 AM
To: 'David Bernhardt'
Subject: Meeting this Morning

David,

I have meetings this morning at 10:00 and 10:30 with Valadao and Costa, respectively. If you are available, please attend. I understand if you have other commitments.

Tom

From: Bernhardt, David L.
Sent: Friday, July 10, 2015 4:48 AM
To: 'Tom Birmingham'
Subject: RE: Meeting this Morning

Thanks Tom. I will meet you at Valadao's office.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Friday, July 10, 2015 7:26 AM
To: Bernhardt, David L.
Subject: Meeting this Morning

David,

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From: Tom Birmingham
Sent: Friday, July 10, 2015 4:58 AM
To: 'Bernhardt, David L.'
Subject: RE: Meeting this Morning

Thank you.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Friday, July 10, 2015 4:48 AM
To: 'Tom Birmingham'
Subject: RE: Meeting this Morning

Thanks Tom. I will meet you at Valadao's office.

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
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To: Bernhardt, David L.
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From: Bernhardt, David L.
Sent: Friday, July 10, 2015 6:17 AM
To: Tom Birmingham
Subject: Re: Meeting this Morning

Tom: What time is your flight?

David Bernhardt

On Jul 10, 2015, at 7:58 AM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Thank you.

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Friday, July 10, 2015 4:48 AM
To: 'Tom Birmingham'
Subject: RE: Meeting this Morning

Thanks Tom. I will meet you at Valadao's office.

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Friday, July 10, 2015 7:26 AM
To: Bernhardt, David L.
Subject: Meeting this Morning

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From: Weaver, Kiel

Sent: Sunday, July 12, 2015 11:07 AM

To: Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt

CC: Tudor, Chris; Wong, Bryson

Subject: Need some facts and figures by Monday cob

Tom, Johnny and David:

So, here's the order of events this week as of Sunday at 2pm eastern time:

1) Tuesday, 3pm. Rules Committee meets to hear the bill so it can issue a rule governing debate. McClintock will be there on behalf of Chairman Bishop to discuss the bill. We expect Huffman to be there on behalf of Grijalva. As you know, Huffman made a number of statements at the markup last week. Knowing Tom McClintock, he will want to know the facts and figures to respond and we should have them for the floor.

2) Wednesday afternoon. Debate the rule/general debate/amendments on the floor. We don't know amendments yet.

As such, is there a way to answer the following statements/questions with facts and figures:

The majority attempts to use the loss of jobs in the agricultural industry as the need for such immediate legislation, but the loss of Ag jobs was not nearly as severe as originally thought and agricultural employment is beginning to rise.

Unemployment was already high in the San Joaquin Valley. The biological opinions have a negligible impact on the unemployment rate.

The land retirements come from natural drought not the biological opinions.

How much land has been retired due to the biological opinions/cvpia during this four year drought?

How much water has been lost in 2014 and 2015 due to the biological opinions?

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

From: Johnny Amaral

Sent: Sunday, July 12, 2015 12:27 PM

To: Weaver, Kiel

CC: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; Tudor, Chris; Wong, Bryson

Subject: Re: Need some facts and figures by Monday cob

It would be an honor and a privilege to help. We will get this info to you by mid day tomorrow.

Best,

Johnny Amaral

On Jul 12, 2015, at 11:06 AM, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov> wrote:

Tom, Johnny and David:

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Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

From: Tom Birmingham
Sent: Monday, July 13, 2015 7:21 AM
To: 'Weaver, Kiel'; 'Johnny Amaral'; 'David Bernhardt'
CC: 'Tudor, Chris'; 'Wong, Bryson'
Subject: RE: Need some facts and figures by Monday cob
Attachments: Loss Slide.pptx

Kiel,

I will with David and Johnny on responding to your questions, put as it relates to water losses, in 2014 I do not believe that there were significant losses at the pumps due to the biological opinion. It was so dry that virtually all of the losses were due to requirements imposed by the SWRCB. I believe the ESA losses, were approximately 30,000 acre-feet.

However, 2015 is a different story. Attached is a graph prepared by Tom Boardman at the San Luis & Delta-Mendota Water Authority. According to Tom's calculations, losses under the biological opinions exceed 476,000 acre-feet in the 2015 water year.

Tom

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]
Sent: Sunday, July 12, 2015 11:07 AM
To: Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Cc: Tudor, Chris; Wong, Bryson
Subject: Need some facts and figures by Monday cob

Tom, Johnny and David:

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Unemployment was already high in the San Joaquin Valley. The biological opinions have a negligible impact on the unemployment rate.

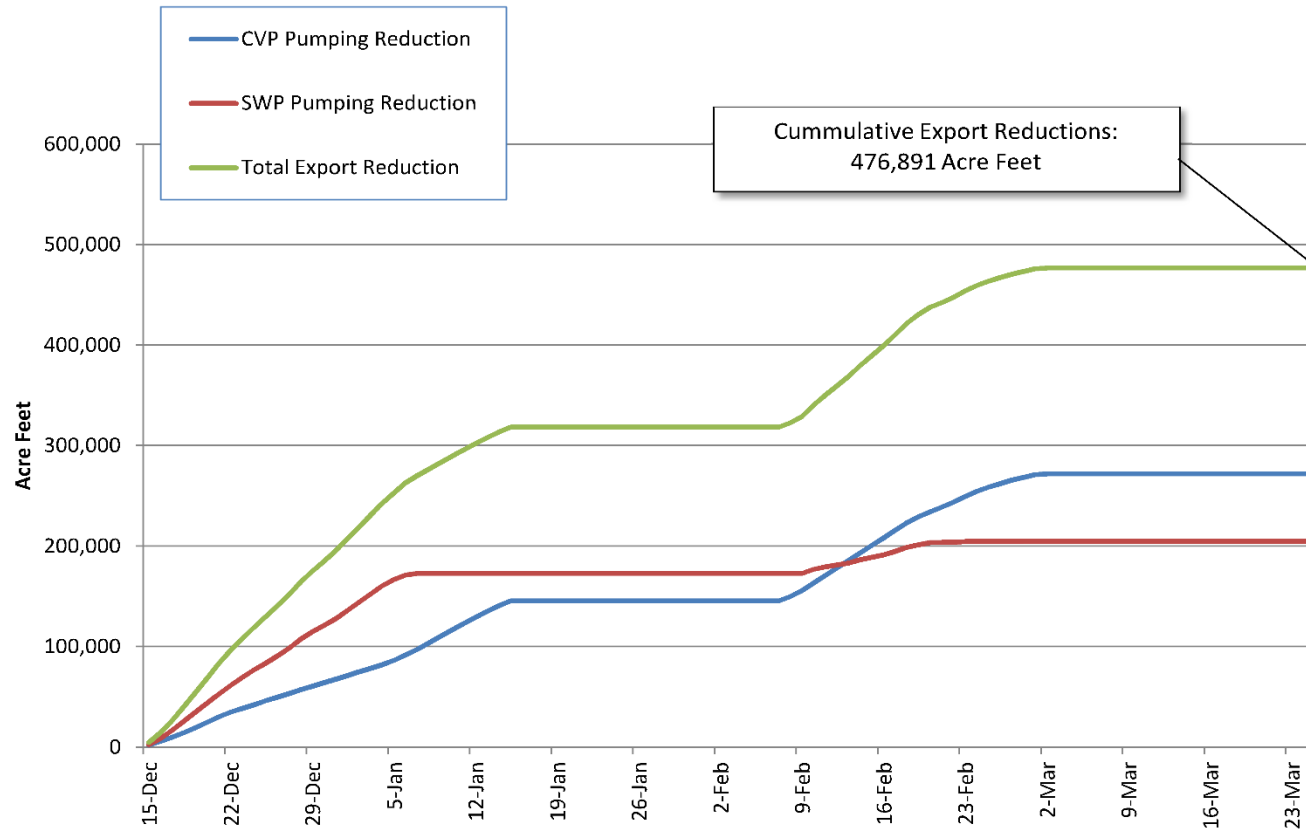
The land retirements come from natural drought not the biological opinions.

How much land has been retired due to the biological opinions/cvpia during this four year drought?

How much water has been lost in 2014 and 2015 due to the biological opinions?

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

2015 Cumulative Water Supply Impacts Due to ESA-Related Restrictions



From: Tom Birmingham
Sent: Monday, July 13, 2015 8:55 AM
To: 'Weaver, Kiel'
CC: 'David Bernhardt'; 'Johnny Amaral'; 'Wong, Bryson'
Subject: FW: Need some facts and figures by Monday cob

Unemployment was already high in the San Joaquin Valley. The biological opinions have a negligible impact on the unemployment rate.

Kiel,

This is among the most disingenuous arguments offered by opponents of H.R. 2898. This arguments is based on the premise that as a matter of public policy, it is permissible to impose the economic cost of federal environmental policies on these communities because the communities are poor and disadvantaged. The argument stands the concept of "environmental justice" on its head. Moreover, the argument is factually wrong. In 2013, the biological opinions reduced CVP and SWP water supplies by more than 815,000 acre-feet of water. It was estimated that these water supply impacts cost in excess of twenty thousand jobs, but even if the impact of were only 10,000 jobs, what member of Congress would sit back and quietly acquiesce to a federal regulatory program that cost 10,000 jobs in the region he or she represents?

Tom

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]
Sent: Sunday, July 12, 2015 11:07 AM
To: Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Cc: Tudor, Chris; Wong, Bryson
Subject: Need some facts and figures by Monday cob

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The land retirements come from natural drought not the biological opinions.

How much land has been retired due to the biological opinions/cvpia during this four year drought?

How much water has been lost in 2014 and 2015 due to the biological opinions?

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

From: Tom Birmingham
Sent: Monday, July 13, 2015 10:26 AM
To: 'Weaver, Kiel'
CC: 'David Bernhardt'; 'Johnny Amaral'; 'Wong, Bryson'
Subject: FW: Need some facts and figures by Monday cob

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

This argument is absurd. The environmental impact statement being prepared by the Bureau of Reclamation on implementation of the biological opinions estimates that on a long-term annual average, the reasonable and prudent alternatives prescribed by the biological opinions will reduce CVP water deliveries by 332,000 acre-feet annually, and reduce SWP water deliveries by 773,000 acre-feet annually. 332,000 acre-feet is enough water to irrigate 132,000 acres. Moreover, these numbers represent the "average." In some years, like 2009, according Reclamation, the impact of the biological opinions on exports for CVP contractors was in excess of 390,00 acre-feet. In 2013, the first year of this extended drought, CVP export reductions due to the biological opinions were 339,200 acre-feet, according to Reclamation.

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]
Sent: Sunday, July 12, 2015 11:07 AM
To: Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Cc: Tudor, Chris; Wong, Bryson
Subject: Need some facts and figures by Monday cob

Tom, Johnny and David:

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How much water has been lost in 2014 and 2015 due to the biological opinions?

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

From: Tom Birmingham
Sent: Monday, July 13, 2015 10:40 AM
To: 'Weaver, Kiel'
CC: 'David Bernhardt'; 'Johnny Amaral'; 'Wong, Bryson'
Subject: FW: Need some facts and figures by Monday cob

How much water has been lost in 2014 and 2015 due to the biological opinions?

According to the Bureau of Reclamation, in 2014 the salmonid biological opinion reduced Central Valley Projects exports by 62,200 acre-feet. The estimate by the San Luis & Delta-Mendota Water Authority for 2015 is that the biological opinions reduced CVP exports by approximately 280,000 acre-feet. (Please see the graph sent earlier today.)

From: Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]
Sent: Sunday, July 12, 2015 11:07 AM
To: Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Cc: Tudor, Chris; Wong, Bryson
Subject: Need some facts and figures by Monday cob

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How much water has been lost in 2014 and 2015 due to the biological opinions?

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

From: Johnny Amaral
Sent: Monday, July 13, 2015 10:46 AM
To: Tom Birmingham
CC: Weaver, Kiel; David Bernhardt; Wong, Bryson
Subject: Re: Need some facts and figures by Monday cob

Just in westlands water district (not counting all the other districts), there are around 200k acres of productive farmland that are followed as a result of the water loss due to environmental regulations. That land would be in production with an average water supply.

The assertion that the biops have had no effect on land retirement shows either a sincere lack of understanding, or a deliberate attempt to deceive.

Best,

Johnny Amaral

On Jul 13, 2015, at 10:25 AM, "Tom Birmingham" <tbirmingham@westlandswater.org> wrote:

Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

This argument is absurd. The environmental impact statement being prepared by the Bureau of Reclamation on implementation of the biological opinions estimates that on a long-term annual average, the reasonable and prudent alternatives prescribed by the biological opinions will reduce CVP water deliveries by 332,000 acre-feet annually, and reduce SWP water deliveries by 773,000 acre-feet annually. 332,000 acre-feet is enough water to irrigate 132,000 acres. Moreover, these numbers represent the "average." In some years, like 2009, according Reclamation, the impact of the biological opinions on exports for CVP contractors was in excess of 390,00 acre-feet. In 2013, the first year of this extended drought, CVP export reductions due to the biological opinions were 339,200 acre-feet, according to Reclamation.

From: Weaver, Kiel [<mailto:Kiel.Weaver@mail.house.gov>]
Sent: Sunday, July 12, 2015 11:07 AM
To: Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt
Cc: Tudor, Chris; Wong, Bryson
Subject: Need some facts and figures by Monday cob

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Studies have shown that environmental regulations have had no effect on water restrictions to federal contractors.

From: Petersen, Scott

Sent: Monday, July 13, 2015 3:00 PM

To: Anne MacMillan; David Longly Bernhardt; Dennis Nuxoll; Dennis Cardoza; Johnny Amaral; Joe Raeder; Nancy Williams

Subject: Fwd: Oppose H.R. 2898- a radical assault on California's environmental protections

FYI

Sent from my iPhone, with brevity...

Begin forwarded message:

From: Madeleine Foote <madeleine_foote@lcv.org>

Date: July 13, 2015 at 5:32:52 PM EDT

To: <scott.petersen@mail.house.gov>

Subject: Oppose H.R. 2898- a radical assault on California's environmental protections

Reply-To: <madeleine_foote@lcv.org>

Click To View Documents: [HR 2898 oppose letter 7 7 15.pdf \(12KB\)](#);

Hello Scott,

Please find attached and below a community letter urging Congressman Costa to oppose H.R. 2898, the so-called *Western Water and American Security Act*, which is simply a radical assault on the protections for fish, birds, and other wildlife in California's Bay-Delta as well as the jobs that depend on them, while doing nothing to help the state's water crisis. H.R. 2898 would undermine the Endangered Species Act, jeopardizing populations of salmon and other local fisheries, threaten the habitat of millions of birds by reducing funding sources and undermining the water rights of wildlife refuges', and put at risk thousands of jobs that rely on a healthy Bay-Delta.

The bill also includes additional provisions that would have ramifications across other western states, including reducing public input and review of water projects, reducing funding for the Bureau of Reclamation, and limiting states' and the federal government's ability to manage and protect water resources. California's continued drought, not federal environmental laws, is the cause of low water supplies, but H.R. 2898 has never been subject to public input from the state of California, sportsmen and other businesses that rely on the Bay-Delta, tribes, or conservationists.

The League of Conservation Voters has scored bills like H.R. 2898 in the past, most recently in our 2014 *National Environmental Scorecard*: <http://scorecard.lcv.org/roll-call-vote/2014-50-california-water-resources>. Again, we urge Congressman Costa to oppose H.R. 2898 and will consider including votes on this bill in the 2015 *Scorecard*.

Please let me know if you have any questions.

Thanks,
Madeleine

Madeleine Foote
Legislative Representative

**American Rivers * California League of Conservation Voters *
Center for Biological Diversity * Clean Water Action *
Conservatives for Responsible Stewardship * Defenders of Wildlife * Earthjustice *
Endangered Species Coalition * Environmental Defense Fund * Greenpeace *
League of Conservation Voters * National Audubon Society *
Natural Resources Defense Council * Pacific Coast Federation of Fishermen's Associations
* San Juan Citizens Alliance * Sierra Club * The Bay Institute *
Western Nebraska Resources Council * Wildlands Network**

PLEASE OPPOSE H.R. 2898

Dear Representative:

On behalf of the undersigned organizations, we write to urge you to oppose H.R. 2898 (Valadao, R-CA), a bill that would dramatically weaken protections for salmon, migratory birds, and other fish and wildlife in California's Bay-Delta estuary, and the thousands of fishing jobs in California and Oregon that depend on the health of these species. In addition, the bill includes several titles that would apply across Western states, which would reduce public and environmental reviews of new dams and water infrastructure, reduce funding for the Bureau of Reclamation, and limit the federal government's ability to manage and protect water resources. Both the White House and the State of California have opposed similar legislation in recent years, including opposition to H.R. 3964 (Valadao, R-CA) and H.R. 5781 (Valadao, R-CA) in 2014.

California's ongoing drought – not federal environmental laws protecting salmon and other native fish and wildlife – is the primary reason for low water supplies across the state. Yet H.R. 2898 would permanently override protections for salmon and other native fisheries under the Endangered Species Act, and substitute political judgment for existing scientific determinations. It could also devastate wildlife refuges that provide habitat for millions of birds that migrate along the Pacific Flyway by undermining the refuges' water rights and threatening critically important funding sources. H.R. 2898 is not a temporary response to drought, but instead would permanently amend and override the requirements of the Endangered Species Act and other federal laws. For example, under the proposed legislation, critical environmental review and public input under the National Environmental Policy Act would be either severely limited or completely eliminated for new dams and other water storage projects across the west. Moreover, several provisions of the bill would preempt state law, including a provision (section 313) which would repeal and override state and federal laws, a court order, and a binding settlement agreement to restore the San Joaquin River.

H.R. 2898 has never been subject to a single committee hearing to receive public input from the State of California, hunting organizations, sport and commercial fishermen, tribes, or conservation groups, despite the fact that the bill could greatly interfere with state water rights and cripple the ability of state and federal agencies to manage limited water resources for all beneficial uses. The bill attempts to scapegoat environmental protections for the lack of rain and snow, and it threatens thousands of fishing jobs in California, Oregon, and beyond that depend on healthy salmon runs from the Bay-Delta. The closure of the salmon fishery in 2008 and 2009 resulted in thousands of lost jobs in these states. The livelihoods of commercial and recreational salmon fishermen, Delta farmers, fishing guides, tackle shops, and communities

across California and along the West Coast depend on the environmental protections that H.R. 2898 would eliminate.

For these reasons, we respectfully urge you to oppose H.R. 2898.

Sincerely,

American Rivers
California League of Conservation Voters
Center for Biological Diversity
Clean Water Action
Conservatives for Responsible Stewardship
Defenders of Wildlife
Earthjustice
Endangered Species Coalition
Environmental Defense Fund
Greenpeace
League of Conservation Voters
National Audubon Society
Natural Resources Defense Council
Pacific Coast Federation of Fishermen's Associations
San Juan Citizens Alliance
Sierra Club
The Bay Institute
Western Nebraska Resources Council
Wildlands Network

From: Weaver, Kiel

Sent: Monday, July 13, 2015 6:23 PM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; jamaral@westlandswater.org

Subject: FW: HR 2898- Summary of Amendments Submitted v2

Attachments: HR 2898 - Summary of Amendments Submitted v2.pdf

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Sent: Monday, July 13, 2015 7:17 PM

To: Blake, Nathan

Subject: HR 2898- Summary of Amendments Submitted v2

Late addition of Calvert #30

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H.R. 2898 - Western Water and American Food Security Act of 2015

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Alec Davis

Professional Staff

House Committee on Rules

H-312, the Capitol | Washington, DC 20515

(202) 225-9191

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H.R. 2898 - Western Water and American Food Security Act of 2015**

(summaries derived from information provided by sponsors)

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From: Tom Birmingham
Sent: Tuesday, July 14, 2015 8:15 AM
To: 'Weaver, Kiel'
CC: 'David Bernhardt'; 'Johnny Amaral'
Subject: FW: HR 2898- Summary of Amendments Submitted v2

Kiel,

I should have pointed out that neither 25 nor 22 has the potential of producing any water. 23 has the potential to produce water, but only if a screen is determined to be feasible. 24 is not likely to produce any water. Take at the pumps is not a problem. According to the fishery services, the biological opinion reasonable and prudent alternatives are designed primarily to protect against indirect mortality, not direct take at the pumps. In fact, salmon survival increases when there are higher rates of pumping.

Please call if you have any questions.

Tom

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Monday, July 13, 2015 10:39 PM
To: 'Weaver, Kiel'
Subject: RE: HR 2898- Summary of Amendments Submitted v2

Kiel,

Not necessarily in order:

Garamendi 25 is not a bad idea, but if it were added to the bill it would create jurisdiction for the Senate Environment and Public Works Committee, which should be avoided because Boxer is the ranking member of that committee.

Garamendi 22 would prohibit the stream lining provisions of HR2983 from being applied to the Delta tunnels project, which Mr. Garamendi adamantly objects to. This amendment, along with Garamendi 23, is the least objectionable amendment, but given Kern County Water Agency's support for the tunnel project, Mr. McCarthy would probably object to this amendment.

Garamendi 23 is also a good idea, but I am not sure it is feasible. Mr. Garamendi believes that the need to close the cross channel gates to protect out migrating salmon smolts could be obviated if a fish screen were installed. The only problem is that I am not sure a fish screen is feasible. If Garamendi would agree to modify the amendment to direct that Secretaries collaborate with the State on studying the feasibility of a fish screen, including an acoustic barrier, and report back to Congress, it would be better.

Garamendi 24 is an old idea and work related to this has already been undertaken. CVPIA section 3406(b)(4) directed the replacement of fish screens at the Tracy plant, but I believe Reclamation determined it was not feasible. The following is a summary from a 2013 Reclamation report:

The Tracy Fish Facility Improvement Program (TFFIP)

- Reclamation began a Tracy Fish Facility Improvement Program (TFFIP) in 1989 with the overall goal of improving fish protection and fish salvage at TFCF.

- TFFIP research is performed in cooperation between the [Mid-Pacific Region](#) and research and engineering groups at the Denver Technical Service Center, including the [Fisheries and Wildlife Resources Group, 86-68290](#) and the [Hydrologic Investigations and Laboratory Services Group, 86-68560](#). Research planning and execution is enhanced through coordination, review and assistance from other agencies including the [California Departments of Fish and Game](#) (CDFG) and [California Department of Water Resources](#) (DWR), [U.S. Fish and Wildlife Service](#) (FWS), and the [National Marine Fisheries Service](#) (NMFS). Universities, private consultants, and the [San Luis Delta Mendota Water Authority](#) also assist.
- TFFIP is now identifying and making physical improvements and operational changes, assessing fishery conditions, and monitoring fish salvage operations per 1992 signed agreements with CDFG and legal requirements under the 1992 [Central Valley Project Improvement Act](#) (CVPIA).
- TFFIP accomplishments to date have included a predator removal program, updated louver efficiency estimates for most species, holding tank surveys, biology and movements of splittail near TFCF, secondary louver netting programs, water quality monitoring, fish egg/larvae entrainment estimates, improved fish handling, more accurate fish identifications, demonstrated abilities for collecting and holding salvaged fish with a “fish friendly” pumping system, and implementation of a “fish friendly” mitten crab removal system (traveling screen).
- Facility improvements under TFFIP have included new fish hauling trucks, new louver cleaner rakes, repair of metals in bypasses, new trash racks, replacement of the upstream trash boom, improved instrumentation for monitoring hydraulic conditions, re-surfacing holding tanks with “fish friendly” coatings, development of on-site fisheries labs, development of research level fish holding facilities for biological testing, installation of a demonstration “fish friendly” pumping system with an above ground holding tank, and installation of a large traveling screen for mitten crab removal.

I hope this response is helpful.

Tom

From: Weaver, Kiel (<mailto:Kiel.Weaver@mail.house.gov>)

Sent: Monday, July 13, 2015 6:23 PM

To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt; jamaral@westlandswater.org

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Alec Davis

Professional Staff

House Committee on Rules

H-312, the Capitol | Washington, DC 20515
(202) 225-9191

From: Bernhardt, David L.

Sent: Tuesday, July 14, 2015 2:04 PM

To: joe.findaro@akerman.com; Thomas W. Birmingham (tbirmingham@westlandswater.org); Denny Rehberg (dennymontana@dennyrehberg.com); Dennis Cardoza (dcardoza@foley.com)

Subject: SAP of H.R. 2898

Attachments: saphr2898r_20150714.pdf

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 14, 2015
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2898 – Western Water and American Food Security Act of 2015

(Rep. Valadao, R-CA, and 26 cosponsors)

The Administration strongly opposes H.R. 2898, the Western Water and American Food Security Act of 2015, because it fails to address critical elements of California's complex water challenges and will, if enacted, impede an effective and timely response to the continuing drought while providing no additional water to hard hit communities. Like similar legislation in the last Congress, H.R. 2898 was developed with little input from the public, the Administration, or key stakeholders affected by the drought. The urgency and seriousness of the California drought requires a balanced and flexible approach that promotes water reliability and ecosystem restoration.

Specifically, H.R. 2898 dictates operational decisions and imposes a new legal standard which could actually limit water supplies by creating new and confusing conflicts with existing laws, adding an unnecessary layer of complexity to Federal and State cooperation. This additional standard could slow decision-making, generate significant litigation, and limit real-time operational flexibility critical to maximizing water delivery. And, contrary to current and past Federal reclamation law that defers to State water law, the bill would preempt California water law.

In addition, H.R. 2898 directs specific operations inconsistent with the Endangered Species Act (ESA), thereby resulting in conditions that could be detrimental to the Delta fish and other species listed under Federal and State endangered species laws.

The Administration strongly supports efforts to help alleviate the effects of drought in the West; however, the Administration is concerned with section 401, which establishes deadlines for completing feasibility studies for certain water storage projects. The provision is unnecessary and the dates provided in the bill could prevent the participation of non-Federal partners in certain studies and may inhibit the Administration's ability to consider a full range of options for addressing these issues. In addition, financial penalties levied upon the Bureau of Reclamation under section 403 for not meeting these deadlines would only undermine the Department of the Interior's ability to help address the effects of drought in the West.

Much of the bill contains provisions that have little connection to the ongoing drought. The bill includes language constraining the Administration's ability to protect the commercial and tribal fishery on the Trinity and Klamath Rivers, which will have impacts not just in California, but throughout the west coast. The bill would also repeal the San Joaquin River Settlement Agreement, which the Congress enacted to resolve 18 years of contentious litigation. Full repeal of the settlement agreement would likely result in the resumption of costly litigation, creating an

uncertain future for river restoration and water delivery operations for water users on the San Joaquin River.

Californians are facing significant drought-related challenges. This is why the Administration has directed Federal agencies to work with state and local officials in real-time to maximize limited water supplies, prioritize public health and safety, meet state water quality requirements, and ensure a balanced approach to providing for the water needs of people, agriculture, businesses, power, imperiled species and the environment. Consistent with the 2015 Interagency Drought Strategy, the Administration and Federal agencies have partnered with state agencies in California to improve coordination of water operations in the state. In June, the Administration announced new actions and investments of more than \$110 million to support workers, farmers, and rural communities suffering from drought and to combat wildfires. This builds on the more than \$190 million that agencies across the Federal government have invested to support drought-stricken communities so far this year. Unfortunately, H.R. 2898 would undermine these efforts and the progress that has been made.

For these reasons, if the President were presented with H.R. 2898, his senior advisors would recommend that he veto the bill.

* * * * *

From: Bernhardt, David L.
Sent: Tuesday, July 14, 2015 2:04 PM
To: Johnny Amaral (jamaral@westlandswater.org)
Subject: FW: SAP of H.R. 2898
Attachments: saphr2898r_20150714.pdf

I meant to include you.

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Specifically, H.R. 2898 dictates operational decisions and imposes a new legal standard which could actually limit water supplies by creating new and confusing conflicts with existing laws, adding an unnecessary layer of complexity to Federal and State cooperation. This additional standard could slow decision-making, generate significant litigation, and limit real-time operational flexibility critical to maximizing water delivery. And, contrary to current and past Federal reclamation law that defers to State water law, the bill would preempt California water law.

In addition, H.R. 2898 directs specific operations inconsistent with the Endangered Species Act (ESA), thereby resulting in conditions that could be detrimental to the Delta fish and other species listed under Federal and State endangered species laws.

The Administration strongly supports efforts to help alleviate the effects of drought in the West; however, the Administration is concerned with section 401, which establishes deadlines for completing feasibility studies for certain water storage projects. The provision is unnecessary and the dates provided in the bill could prevent the participation of non-Federal partners in certain studies and may inhibit the Administration's ability to consider a full range of options for addressing these issues. In addition, financial penalties levied upon the Bureau of Reclamation under section 403 for not meeting these deadlines would only undermine the Department of the Interior's ability to help address the effects of drought in the West.

Much of the bill contains provisions that have little connection to the ongoing drought. The bill includes language constraining the Administration's ability to protect the commercial and tribal fishery on the Trinity and Klamath Rivers, which will have impacts not just in California, but throughout the west coast. The bill would also repeal the San Joaquin River Settlement Agreement, which the Congress enacted to resolve 18 years of contentious litigation. Full repeal of the settlement agreement would likely result in the resumption of costly litigation, creating an

uncertain future for river restoration and water delivery operations for water users on the San Joaquin River.

Californians are facing significant drought-related challenges. This is why the Administration has directed Federal agencies to work with state and local officials in real-time to maximize limited water supplies, prioritize public health and safety, meet state water quality requirements, and ensure a balanced approach to providing for the water needs of people, agriculture, businesses, power, imperiled species and the environment. Consistent with the 2015 Interagency Drought Strategy, the Administration and Federal agencies have partnered with state agencies in California to improve coordination of water operations in the state. In June, the Administration announced new actions and investments of more than \$110 million to support workers, farmers, and rural communities suffering from drought and to combat wildfires. This builds on the more than \$190 million that agencies across the Federal government have invested to support drought-stricken communities so far this year. Unfortunately, H.R. 2898 would undermine these efforts and the progress that has been made.

For these reasons, if the President were presented with H.R. 2898, his senior advisors would recommend that he veto the bill.

* * * * *

From: Johnny Amaral
Sent: Tuesday, July 14, 2015 7:20 PM
To: Tom Birmingham; David Bernhardt; Jean & Diane Sagouspe (E-mail)
Subject: Fwd: HR 2898

FYI. I put a call into Fritz Grupe early this afternoon and never heard back. This was probably inevitable though even though this years bill is much different. SJ County has opposed the other House efforts in the past...

Best,

Johnny Amaral

Begin forwarded message:

From: "Larrabee, Jason" <Jason.Larrabee@mail.house.gov>
Date: July 14, 2015 at 6:43:27 PM PDT
To: Cardoza Dennis <dcardoza@foley.com>, Amaral Johnny <jamaral@westlandswater.org>
Subject: Fwd: HR 2898

FYI. Sorry. I tried.

Jason Larrabee
Rep. Jeff Denham
Sent from my iPad

Begin forwarded message:

From: "Miller, Katherine" <kmiller@sjgov.org>
Date: July 14, 2015 at 8:48:36 PM EDT
To: "'jason.larrabee@mail.house.gov'" <jason.larrabee@mail.house.gov>
Cc: "Winn, Charles" <cwinn@sjgov.org>, "Elliott, Bob" <belliott@sjgov.org>, "Bestolarides, Steve" <sbestolarides@sjgov.org>, "Villapudua, Carlos" <cvillapudua@sjgov.org>, "Nino, Monica" <nino@sjgov.org>, "Myles, James" <jmyles@sjgov.org>, "Nakagawa, Brandon" <bnakagawa@sjgov.org>, "Buchman, Fritz" <fbuchman@sjgov.org>
Subject: HR 2898

Dear Congressman Denham,

As Chair of the San Joaquin County Board of Supervisors, I am writing to inform you that the County has signed onto the Delta County Coalition letter of opposition to HR 2898. It is critical that San Joaquin County maintain a strong coalition with the other Delta Counties to ensure that we get a fair shot in protecting our interests in the Delta. Much like your District, we sometimes find ourselves conflicted on issues, especially when it comes to water. We have appreciated the productive collaboration with you and your staff in the past, and look forward to working together on the drought bill. San Joaquin County Staff has already started to reach out to the areas of SJC within your District, to find common ground and we hope to provide constructive feedback and input.

Thank you for your continued support.

Kathy

Katherine M. Miller, Chair
San Joaquin County Board of Supervisors
44 N. San Joaquin St., Suite 627
Stockton, CA 95202
209.468.3113
kmiller@sjgov.org

Jason,

As Chair of the San Joaquin County Board of Supervisors, I am writing to inform you of that the County has signed onto the Delta County Coalition letter of opposition to HR 2898. It is critical that San Joaquin County maintain a strong coalition with the other Delta Counties to ensure that we get a fair shot in protecting our interests in the Delta. Much like your District, we find ourselves conflicted on issues, especially when it comes to water. Going forward, I certainly appreciate your staff's willingness to engage on the drought bill. Staff has already started to reach out to the areas of SJC within your District to find common ground and hope to provide constructive feedback and input. Thank you for your continued support.

Kathy Miller

Brandon Nakagawa, P.E.

Water Resources Coordinator

San Joaquin County Department of Public Works

[\(209\) 468-3089](tel:2094683089)

[\(209\) 468-2999](tel:2094682999) fax

From: Patterson, Katie [mailto:kpatterson@sjgov.org]

Sent: Tuesday, July 14, 2015 4:22 PM

To: Brandon Nakagawa

Cc: Fritz Buchman; Terrence Dermody; Myles, James; Nino, Monica; Roger Gwinn; Mark Limbaugh

Subject: Re: water bill conference call

Hi there. After our call with Jeff Shields, Supervisor Elliott was still wanting the County to express concern, and not opposition. It is my understanding that Chair Miller was to connect with Natasha today, and is going to express the County's position of opposition. My question is has the Chair reached out to Natasha, and has the County formally weighed in our position?

Post this week, Jeff (SSJID) has offered to host participants that were on the call with Congressman Denham's office to bring folks around the table to discuss the bill further.

KP

Sent from my iPhone

On Jul 14, 2015, at 4:02 PM, "Brandon Nakagawa" <bnakagawa@sjgov.org> wrote:

FYI. Communication from Jason Larrabee on Congressman Denham's priorities for the Valadao drought bill.

Brandon Nakagawa, P.E.

Water Resources Coordinator

San Joaquin County Department of Public Works

[\(209\) 468-3089](tel:(209)468-3089)

[\(209\) 468-2999](tel:(209)468-2999) fax

From: Patterson, Katie [mailto:kpatterson@sjgov.org]

Sent: Tuesday, July 14, 2015 3:07 PM

To: Brandon Nakagawa

Subject: Fwd: water bill conference call

FYI

Sent from my iPhone

Begin forwarded message:

From: Jeff Shields <jshields@ssjid.com>
Date: July 14, 2015 at 3:05:38 PM PDT
To: "Patterson, Katie" <kpatterson@sjgov.org>
Subject: FW: water bill conference call

FYI

From: Larrabee, Jason
[<mailto:Jason.Larrabee@mail.house.gov>]
Sent: Tuesday, July 14, 2015 1:26 PM
To: Rucker, Bob; Jeff Shields; Bob Elliott
(belliott@sjgov.org); elliotttrv@earthlink.net; Rick
Gilmore; David Weisenberger; kmiller@sjgov.org; Filios,
Susan; michael.maci@ca.tracy.ca.us;
iferriera@ci.manteca.us
Subject: RE: water bill conference call
Importance: High

Hi All,

Thanks for being on the call today on such short notice.

As requested, the following are high priority areas for Mr. Denham within HR 2898:

Sec. 102 – Having the best science should be everyone's desire. The current ITL for smelt never are met and thousands are taken for research purposes that far exceed what is allowed at the pumps.

Sec. 103(b) & (d) – same as above.

Sec. 202 (a) – same as above.

Sec. 202 (e) & (f) – require agencies to better study and analyze project operations and how it impacts species based on a range of OMR flow.

Sec. 203 – included at the request of SSJID and OID. We need to be dealing with predators.

Sec. 204 – requires a larger focus on predator and invasive species eradication. This would allow for projects on water hyacinth removal, as an example.

Sec. 302 (b)(3) – implements current operational criteria as approved by the SWRCB.

Sec. 302 (c – e) – allow for and justify decisions on an accelerated timeline.

Sec. 304 – implements current operational criteria as approved by the SWRCB.

Sec. 307 – allow for exports when the delta is in excess condition and not harmful to species, as determined by regulatory agencies. This section may give some heart burn, but no fish scientist has said there are impacts when outflow is above 17,000 cfs and this allows for some water to SOD users.

Sec. 308 – transfers happen every year and should be done expeditiously.

Sec. 310 – included at the request of SSJID and OID.

Sec. 314 – rescheduling of water is critical for SOD users.

Title IV – Mr. Denham wants to build storage now.

Title V – this title was negotiated by numerous water attorneys and everyone feels it covers all. Of particular interest, Sec. 505 was included specifically for water right holders like delta users.

Sec. 602 – Oversight and guidance of how restoration fund dollars are used is important for improved species survival by people other than government agencies.

Sec. 604 – CVPIA required the replaced of 800,000 ac/ft of water provided to the environment, but no plan has been put forth to date. Mr. Denham wants a plan to replace that lost water.

Sec. 606 – Mr. Denham believes local control is better when it comes to water supplies. This provision allows for OID, SSJID, Stockton East WD and C SJ WCD, among others, to be able to control the management, operations and ownership (if so desired) of New Melones Reservoir.

Sec. 610 – Mr. Denham believes we should not protect striped bass as a part of CVPIA since it is a known, non-native, predator of threatened and endangered fish species.

Title VII & VIII – Mr. Denham wants improve water supply and USBR project delivery timelines. These are consistent with transportation project delivery streamlining.

Title IX – Congress would create a surface water storage construction account for the first time. Mr. Denham believes we need more storage within the state.

Title X – We should have safe dams.

Title XI – This title is specially for all western united states and have been reviewed and approved by many western water attorneys, including CA.

Information, action and amendments being proposed and approved for floor action can be found here: <https://rules.house.gov/bill/114/hr-2898>

Please let me know if you have further questions, comments or how I can be of assistance in anyway.

Regards,

Jason

Jason Larrabee

Chief of Staff

Rep. Jeff Denham (CA-10)

(202) 225-4540 - office

(530) 570-1620 - cell

Please sign up for Rep Denham's e-newsletter at
<http://denham.house.gov/contact-me/newsletter>

From: Rucker, Bob
Sent: Tuesday, July 14, 2015 2:12 PM
To: Jeff Shields; Bob Elliott (belliott@sjgov.org);
elliotttrv@earthlink.net; Rick Gilmore; David Weisenberger; kmiller@sjgov.org; Filios, Susan; michael.maciel@ca.tracy.ca.us; jferriera@ci.manteca.us
Cc: Larrabee, Jason
Subject: water bill conference call

We will have a conference call today at 11:30 PT with Congressman Denham to discuss HR 2898.

Currently, participants are: Congressman Jeff Denham, CCID General manager Jeff Shields, San Joaquin County Supervisors Kathy Miller, Chair and Bob Elliot, Byron Bethany ID General Manager Rick Gilmore, Banta Carbona General manager David Weisenberger, Manteca City Manager's office Johanna Ferriera, Tracy Mayor Mike Maciel, Assistant to Chair Kathy Miller Susan Filios, Jason Larrabee, Chief of Staff, Congressman Jeff Denham and yours truly.

The call in number is [712-](tel:712-) [REDACTED] the code is [REDACTED]

Please call me if you have any questions.

Best Regards,

Bob

Bob Rucker

District Director

Office of Congressman Jeff Denham

10th Congressional District

4701 Sisk Road, Suite 202

Modesto, CA 95356

Phone: [209-579-5458](tel:209-579-5458)

Mobile: [209-](tel:209-579-5458)-

Fax: [209-579-5028](tel:209-579-5028)



<image001.png>

<image002.jpg>

<image003.png>

<image004.png>

<image005.png>

From: Tom Birmingham
Sent: Tuesday, July 14, 2015 11:01 PM
To: Weaver, Kiel
Subject: Re: HR 2898- Summary of Amendments Submitted v2

Yes. Reclamation would have to conduct a study.

Sent from my iPhone

On Jul 14, 2015, at 7:04 PM, "Weaver, Kiel" <Kiel.Weaver@mail.house.gov> wrote:

Tom, Garamendi 23 is in order. Would the BOR still have to go through a study to construct anyway?

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Tuesday, July 14, 2015 11:14 AM
To: Weaver, Kiel
Cc: 'David Bernhardt' <dbernhardt@bhfs.com>; 'Johnny Amaral' <jamaral@westlandswater.org>
Subject: FW: HR 2898- Summary of Amendments Submitted v2

Kiel,

I should have pointed out that neither 25 nor 22 has the potential of producing any water. 23 has the potential to produce water, but only if a screen is determined to be feasible. 24 is not likely to produce any water. Take at the pumps is not a problem. According to the fishery services, the biological opinion reasonable and prudent alternatives are designed primarily to protect against indirect mortality, not direct take at the pumps. In fact, salmon survival increases when there are higher rates of pumping.

Please call if you have any questions.

Tom

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Monday, July 13, 2015 10:39 PM
To: 'Weaver, Kiel'
Subject: RE: HR 2898- Summary of Amendments Submitted v2

Kiel,

Not necessarily in order:

Garamendi 25 is not a bad idea, but if it were added to the bill it would create jurisdiction for the Senate Environment and Public Works Committee, which should be avoided because Boxer is the ranking member of that committee.

Garamendi 22 would prohibit the stream lining provisions of HR2983 from being applied to the Delta tunnels project, which Mr. Garamendi adamantly objects to. This amendment, along with Garamendi 23, is the least objectionable amendment, but given Kern County Water Agency's support for the tunnel project, Mr. McCarthy would probably object to this amendment.

Garamendi 23 is also a good idea, but I am not sure it is feasible. Mr. Garamendi believes that the need to close the cross channel gates to protect out migrating salmon smolts could be obviated if a fish screen were installed. The only problem is that I am not sure a fish screen is feasible. If Garamendi would agree to modify the amendment to direct that Secretaries collaborate with the State on studying the feasibility of a fish screen, including an acoustic barrier, and report back to Congress, it would be better.

Garamendi 24 is an old idea and work related to this has already been undertaken. CVPIA section 3406(b)(4) directed the replacement of fish screens at the Tracy plant, but I believe Reclamation determined it was not feasible. The following is a summary from a 2013 Reclamation report:

The Tracy Fish Facility Improvement Program (TFFIP)

- Reclamation began a Tracy Fish Facility Improvement Program (TFFIP) in 1989 with the overall goal of improving fish protection and fish salvage at TFCF.
- TFFIP research is performed in cooperation between the [Mid-Pacific Region](#) and research and engineering groups at the Denver Technical Service Center, including the [Fisheries and Wildlife Resources Group, 86-68290](#) and the [Hydrologic Investigations and Laboratory Services Group, 86-68560](#). Research planning and execution is enhanced through coordination, review and assistance from other agencies including the [California Departments of Fish and Game](#) (CDFG) and [California Department of Water Resources](#) (DWR), [U.S. Fish and Wildlife Service](#) (FWS), and the [National Marine Fisheries Service](#) (NMFS). Universities, private consultants, and the [San Luis Delta Mendota Water Authority](#) also assist.
- TFFIP is now identifying and making physical improvements and operational changes, assessing fishery conditions, and monitoring fish salvage operations per 1992 signed agreements with CDFG and legal requirements under the 1992 [Central Valley Project Improvement Act](#) (CVPIA).
- TFFIP accomplishments to date have included a predator removal program, updated louver efficiency estimates for most species, holding tank surveys, biology and movements of splittail near TFCF, secondary louver netting programs, water quality monitoring, fish egg/larvae entrainment estimates, improved fish handling, more accurate fish identifications, demonstrated abilities for collecting and holding salvaged fish with a “fish friendly” pumping system, and implementation of a “fish friendly” mitten crab removal system (traveling screen).
- Facility improvements under TFFIP have included new fish hauling trucks, new louver cleaner rakes, repair of metals in bypasses, new trash racks, replacement of the upstream trash boom, improved instrumentation for monitoring hydraulic conditions, re-surfacing holding tanks with “fish friendly” coatings, development of on-site fisheries labs, development of research level fish holding facilities for biological testing, installation of a demonstration “fish friendly” pumping system with an above ground holding tank, and installation of a large traveling screen for mitten crab removal.

I hope this response is helpful.

Tom

From: Weaver, Kiel [<mailto:Kiel.Weaver@mail.house.gov>]
Sent: Monday, July 13, 2015 6:23 PM
To: Birmingham, Thomas (tbirmingham@westlandswater.org); David Bernhardt;
jamaral@westlandswater.org
Subject: FW: HR 2898- Summary of Amendments Submitted v2

Tom,

what are the practical impacts if Garamendi 22, 23, 24, and 25 were adopted?

I have some staffers who want to adopt 23 and 24, specifically. need to know asap.

From: Davis, Alec
Sent: Monday, July 13, 2015 7:17 PM
To: Blake, Nathan
Subject: HR 2898- Summary of Amendments Submitted v2

Late addition of Calvert #30

Summary of Amendments Submitted to the Rules Committee for

H.R. 2898 - Western Water and American Food Security Act of 2015

(summaries derived from information provided by sponsors)

Listed in Alphabetical Order

Jul 13, 2015 7:12PM

Click on sponsor for amendment text.

Bera (CA), DeSaulnier (CA)	#26	Delays implementation of the act until it is determined that it will not have a negative impact on the quantity, quality, and safety of drinking water in the California Delta region.
Calvert (CA), LaMalfa (CA), Denham (CA), Valadao (CA)	#30	LATE Creates a more balanced approach between user group interests on the Restoration Fund Advisory Board by adding a seat for a member representing a wildlife entity that primarily focuses on waterfowl.
Costa (CA)	#19	Updates and modernizes federal and non-federal reservoir operations to incorporate improved scientific understanding and increase water storage capability for drought impacted communities.
Costa (CA)	#20	Prioritizes drought impacted areas of the United States for training grounds for military units with domestic water well drilling capability.
Costa (CA)	#21	Requires the Secretary of the Interior to publish an annual report detailing the instream flows released for the Central Valley Project and measured outcomes as a result of those flows.

DeFazio (OR), Huffman (CA)	#17	Prevents any provision of the act from being implemented if the Pacific Fishery Management Council certifies that it could reduce employment or recreational opportunities for commercial or sport fishermen.
Garamendi (CA)	#22	Prohibits certain permit streamlining from applying to the CA Water Fix, formerly known as the Bay Delta Conservation Plan.
Garamendi (CA)	#23	Directs the Secretaries to collaborate with the California Department of Water Resources to install a fish screen at the Delta Cross Channel Gates.
Garamendi (CA)	#24	Directs the Secretaries to begin a feasibility study for the installation of a fish screen at the Tracy pumps.
Garamendi (CA)	#25	Directs the Secretary of the Interior to coordinate with the Army Corps of Engineers on their Delta Island and Levees Feasibility study, in order to secure levees critical and necessary for the flow of fresh water through the Delta.
Grijalva (AZ)	#12	Funds water reclamation programs and water reuse projects so that the Bureau of Reclamation may investigate more opportunities to reclaim and reuse wastewater and naturally impaired ground and surface water in the 17 Western states and Hawaii.
Grijalva (AZ)	#13	Requires the Secretary of the Interior to determine the cost of climate change-related impacts on water supplies for each geographic basin studied.
Hahn (CA)	#1	Clarifies that Fish and Wildlife is not limited by any provision of this bill to change water flows immediately if the agency finds that there is a detrimental impact to local fish and wildlife. The agency must provide documentation for the change, but is not required to list viable alternatives.
Hahn (CA)	#2	Directs the Department of the Interior to conduct a study of the viability of creating a regional and national pipeline system between federal reservoirs.
Hahn (CA)	#3	Adds a sense of Congress that federal agency buildings shall follow state and local government water conservation measures.
Huffman (CA)	#14	Establishes that nothing in this Act shall take effect until it is determined that none of the provisions will preempt or modify the application of California law.
Huffman (CA)	#15	Strikes from the act a specific clause that preempts and redefines California Fish and Game Code.
Huffman (CA)	#16	Amends the "Water Rights Protection" Title so that the protections apply to the entire bill.
Huffman (CA)	#28	LATE Establishes that the act will not take effect until it is certified that implementation will not negatively impact Indian tribal water rights.

Huffman (CA)	#29	LATE Clarifies that the Secretary of the Interior has already complied with section 3408(j) of Title XXXIV of Public Law 102-575 by submitting a report to Congress for the low-cost plan to increase yields within the Central Valley Project, and that it is the responsibility of Congress to consider and authorize the implementation of this and its individual projects.
LaMalfa (CA), Walden (OR)	#8	Improves due process by providing contractors of a federal water project in California and Oregon ESA applicant status, ensuring that contractors are properly informed of and may provide input to ESA consultations that may impact operations of the project.
LaMalfa (CA)	#18	Speeds development of a new surface water facility by consolidating needed land with the lead agency, a local water utility. The project will be locally funded and operated.
LaMalfa (CA)	#27	LATE Updates feasibility study completion requirements to align with a recently-signed MOU between the project joint powers authority and the Bureau of Reclamation.
Lowenthal (CA), Peters, Scott (CA), Lieu (CA)	#9	Adds a finding that scientific research has found anthropogenic warming to be a significant drought amplifier in California.
McClintock (CA)	#10	Makes one technical change and one clarifying change to the bill.
McNerney (CA), DeSaulnier (CA), Garamendi (CA)	#4	Adds water hyacinth to the list of invasive species to be considered for the pilot project established under the legislation.
McNerney (CA)	#5	Establishes that nothing in the Act can take effect if the Secretary of the Interior determines that it will have a harmful effect on water quality, water availability, and salinity intrusion for agricultural producers in the five Delta counties.
McNerney (CA)	#6	Establishes that nothing in the Act can take effect if the Secretary of the Interior determines that it will result in a reduction in agricultural employment and recreational opportunities for the five Delta Counties in California.
Peters, Scott (CA)	#7	Ensures that the Act will not adversely affect any community's water supply or water budget especially during predicted dry years.
Sanchez, Loretta (CA)	#11	Establishes an independent task force to evaluate the impact of the drought on communities and the economy as well as make further recommendations on short-term and long-term solutions.

Alec Davis

Professional Staff

House Committee on Rules

H-312, the Capitol | Washington, DC 20515

(202) 225-9191

From: Bernhardt, David L.
Sent: Friday, July 17, 2015 1:41 PM
To: Johnny Amaral
Subject: Monday Call

Johnny: I will not be able to participate in the call at 1 p.m. Eastern on Monday.

David



STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

From: Tom Birmingham
Sent: Tuesday, July 21, 2015 1:09 PM
To: 'Johnny Amaral'; 'Nelson, Damon'; 'David Bernhardt'
CC: 'Butler, Jessica'
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Nelson, Damon
Sent: Wednesday, July 22, 2015 8:29 AM
To: Tom Birmingham; 'Johnny Amaral'; 'David Bernhardt'
CC: Butler, Jessica
Subject: RE: Dinner Next Wednesday

Sounds good to me. I'm happy to have dinner with someone who has jumped "Into the deep end"

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Cc: Butler, Jessica
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Johnny Amaral
Sent: Wednesday, July 22, 2015 8:30 AM
To: Nelson, Damon
CC: Tom Birmingham; David Bernhardt; Butler, Jessica
Subject: Re: Dinner Next Wednesday

Thats hilarious Damon. Did you write that one yourself? Devins going too, by the way

Best,

Johnny Amaral

On Jul 22, 2015, at 8:28 AM, "Nelson, Damon" <Damon.Nelson@mail.house.gov> wrote:

Sounds good to me. I'm happy to have dinner with someone who has jumped "Into the deep end"

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Cc: Butler, Jessica
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Nelson, Damon
Sent: Wednesday, July 22, 2015 8:30 AM
To: Johnny Amaral
CC: Tom Birmingham; David Bernhardt; Butler, Jessica
Subject: RE: Dinner Next Wednesday

Then I'm out... ☺

From: Johnny Amaral [mailto:jamaral@westlandswater.org]
Sent: Wednesday, July 22, 2015 11:30 AM
To: Nelson, Damon
Cc: Tom Birmingham; David Bernhardt; Butler, Jessica
Subject: Re: Dinner Next Wednesday

Thats hilarious Damon. Did you write that one yourself? Devins going too, by the way

Best,

Johnny Amaral

On Jul 22, 2015, at 8:28 AM, "Nelson, Damon" <Damon.Nelson@mail.house.gov> wrote:

Sounds good to me. I'm happy to have dinner with someone who has jumped "Into the deep end"

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Cc: Butler, Jessica
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Butler, Jessica
Sent: Wednesday, July 22, 2015 8:32 AM
To: Nelson, Damon; Johnny Amaral
CC: Tom Birmingham; David Bernhardt
Subject: RE: Dinner Next Wednesday

Awesome! Looking forward to it! Maybe I can subtly work Caitlin Jenner into the conversation again. Ha!

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Nelson, Damon
Sent: Wednesday, July 22, 2015 11:31 AM
To: Johnny Amaral
Cc: Tom Birmingham; David Bernhardt; Butler, Jessica
Subject: RE: Dinner Next Wednesday

Then I'm out... 😊

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Wednesday, July 22, 2015 11:30 AM
To: Nelson, Damon
Cc: Tom Birmingham; David Bernhardt; Butler, Jessica
Subject: Re: Dinner Next Wednesday

Thats hilarious Damon. Did you write that one yourself? Devins going too, by the way

Best,

Johnny Amaral

On Jul 22, 2015, at 8:28 AM, "Nelson, Damon" <Damon.Nelson@mail.house.gov> wrote:

Sounds good to me. I'm happy to have dinner with someone who has jumped "Into the deep end"

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'

Cc: Butler, Jessica

Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Bernhardt, David L.
Sent: Friday, July 24, 2015 10:35 AM
To: Johnny Amaral
Subject: Fwd: From Greenwire -- DROUGHT: Feinstein to unveil bill before August recess

FYI

David Bernhardt

Begin forwarded message:

From: "Dbernhardt@bhfs.com" by E&E Publishing" <email_this@eenews.net>
Date: July 24, 2015 at 1:34:03 PM EDT
To: <Dbernhardt@bhfs.com>
Subject: From Greenwire -- DROUGHT: Feinstein to unveil bill before August recess
Reply-To: <Dbernhardt@bhfs.com>

This Greenwire story was sent to you by: Dbernhardt@bhfs.com

Greenwire

AN E&E PUBLISHING SERVICE

DROUGHT: **Feinstein to unveil bill before August recess**

Annie Snider and Geof Koss, E&E reporters

Published: Friday, July 24, 2015

California Sen. Dianne Feinstein (D) is preparing to release her much-anticipated drought measure before lawmakers leave town for August recess.

In an interview this morning, Feinstein said she expects to unveil the legislation as soon as next week.

She said her package incorporates elements of a number of drought bills that have been floated in both chambers, including the controversial measure from Rep. David Valadao (R-Calif.) that the House passed last week and a countermeasure widely supported by regional Democrats ([*Greenwire*](#), July 16).

"What I've done is taken some pieces" from the Valadao bill, a bill from Northern California House Democrat Jared Huffman ([*H.R. 2983*](#)) and from California Democratic Sen. Barbara Boxer's [*S. 176*](#), she said. "We've made a number of changes in the short term; we strengthened the environmental provisions. So we tried to listen to people and make adjustments."

Feinstein's measure is slated for a hearing before the Senate Energy and Natural Resources Committee in September, along with the House-passed bill, committee Chairwoman Lisa Murkowski (R-Alaska) said today.

"It's a big deal, a big issue, and we want to see some action," Murkowski told *Greenwire*.

Murkowski, who has been focused on her comprehensive energy legislation in recent months, has said she is also intent on doing a Westwide water package this year. Whether California-specific drought legislation would hitch a rider on that broader package or would move forward as a stand-alone measure remains to be seen.

Feinstein has already said she is interested in taking a broader look at water issues in this year's bill than the narrow approach she took in emergency legislation last year. That will include water recycling and desalination, as well as new and expanded reservoirs, she has said.

The key question, though, is how far the Senate will go in dictating operations for water projects in California, particularly as those operations relate to endangered species protections.

Environmental and fishermen's groups, as well as lower-chamber Democrats, fiercely opposed the House-passed bill as an opportunistic bid to dismantle the Endangered Species Act. While that measure would not rewrite the language of the 1973 law itself, it would override some of the key agency opinions about specific endangered species protections at water delivery projects.

Feinstein herself said she thought the House bill violated the Endangered Species Act, although she has also said she agrees that there is a need to increase flexibility in the state's water delivery infrastructure.

Being able to strike that balance in a way that gives Democrats comfort about species protections will likely be key to securing enough votes on her side of the aisle to get it passed.

"The question [is] whether the Senate wants to just pass a very hyperpartisan bill, or whether they want to do something that could be enacted into law, that would be something that would generate new water supply and would help us get through the drought, and wouldn't involve weakening environmental laws," said Doug Obegi, a Natural Resources Defense Council water attorney, during a roundtable with reporters yesterday. "I don't know which way they're going to try to go."

California lawmakers will be looking to move swiftly this fall, though, aiming to put legislative changes into effect before the winter rainy season begins.

"To do anything for next winter, we need to obviously try to get it done," Feinstein said.

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From: Butler, Jessica
Sent: Friday, July 24, 2015 12:33 PM
To: 'Tom Birmingham'; 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Subject: RE: Dinner Next Wednesday

I hate to do this, but is it possible to change the dinner to Tuesday or Thursday? My office scheduled the office dinner for Wednesday. If not, I completely understand.

Thank you,

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Cc: Butler, Jessica
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Bernhardt, David L.
Sent: Monday, July 27, 2015 5:18 AM
To: Johnny Amaral
Subject: Feinstein. bill

Johnny: Call me when you get a chance [REDACTED]

[REDACTED]

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From: Tom Birmingham
Sent: Monday, July 27, 2015 3:06 PM
To: 'Butler, Jessica'
CC: 'Johnny Amaral'; 'Nelson, Damon'; 'David Bernhardt'
Subject: RE: Dinner Next Wednesday

Jessica,

Johnny and I have commitments on Tuesday and Thursday, but could do dinner on Tuesday, after the unveiling of Richard Pombo's portrait in the Resources Committee. I'm not sure how long that event will last, but could you do a late dinner? My hope is that the others would be able to join us.

Tom

From: Butler, Jessica [mailto:Jessica.Butler@mail.house.gov]
Sent: Friday, July 24, 2015 12:33 PM
To: 'Tom Birmingham' <tbirmingham@westlandswater.org>; 'Johnny Amaral' <jamaral@westlandswater.org>; Nelson, Damon <Damon.Nelson@mail.house.gov>; 'David Bernhardt' <dbernhardt@bhfs.com>
Subject: RE: Dinner Next Wednesday

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Thank you,

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Cc: Butler, Jessica
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Butler, Jessica
Sent: Tuesday, July 28, 2015 6:39 AM
To: 'Tom Birmingham'
CC: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Subject: RE: Dinner Next Wednesday

I can't, I'm so sorry. This didn't work out the way we planned. Thursday is my only free day. But at least I'll see you all when you come in for our meeting!!

Jessica

Jessica Butler
Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Monday, July 27, 2015 6:06 PM
To: Butler, Jessica
Cc: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Subject: RE: Dinner Next Wednesday

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Tom

From: Butler, Jessica [<mailto:Jessica.Butler@mail.house.gov>]
Sent: Friday, July 24, 2015 12:33 PM
To: 'Tom Birmingham' <tbirmingham@westlandswater.org>; 'Johnny Amaral' <jamaral@westlandswater.org>; Nelson, Damon <Damon.Nelson@mail.house.gov>; 'David Bernhardt' <dbernhardt@bhfs.com>
Subject: RE: Dinner Next Wednesday

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Thank you,

Jessica

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Legislative Director
Rep. David G. Valadao (CA-21)
1004 Longworth House Office Building
Washington, DC 20024
202-225-4695
Jessica.butler@mail.house.gov



From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Tuesday, July 21, 2015 4:09 PM
To: 'Johnny Amaral'; Nelson, Damon; 'David Bernhardt'
Cc: Butler, Jessica
Subject: Dinner Next Wednesday

Johnny, Damon and David,

Jessica Butler and I are having dinner next Wednesday, July 29. I hope you will be able to join us. Details will follow.

Tom

From: Johnny Amaral

Sent: Tuesday, July 28, 2015 1:21 PM

To: Tom Birmingham; Joe Findaro; David Bernhardt; Denny Rehberg; Catherine Karen

Subject: Schedule

Looks like the house might adjourn wednesday night. If that is the case, i bet every meeting we have scheduled for thursday is going to be bumped or canceled.

Best,

Johnny Amaral

From: Johnny Amaral
Sent: Thursday, July 30, 2015 5:55 AM
To: David Bernhardt
Subject: Do you know Sen toomeys chief?

Best,

Johnny Amaral

From: Johnny Amaral

Sent: Monday, August 3, 2015 8:37 AM

To: Dennis Cardoza; Denny Rehberg; David Bernhardt; Joe Findaro; Catherine Karen

Subject: No call today.

Best,

Johnny Amaral

From: Johnny Amaral

Sent: Wednesday, August 5, 2015 9:12 AM

To: Mike Burns

Subject: did you ever connect with David Bernhardt?

From: Johnny Amaral

Sent: Monday, August 10, 2015 9:53 AM

To: David Bernhardt; Dennis Cardoza; Denny Rehberg; Joe Findaro; Catherine Karen

Subject: Need to delay the call by 15 minutes

I'm still on a conf call with the state consultants.

Best,

Johnny Amaral

From: Jason Peltier

Sent: Thursday, August 13, 2015 3:06 PM

To: Karen Clark

CC: Alison MacLeod; Carmela McHenry; Carolyn Jensen; Catherine Karen; Dan Pope; David Bernhardt; Dennis Cardoza; Denny Rehberg; Ed Manning; Emily Lynn Smith; Erick Mullen; Gayle Holman; Jennifer Walsh; Jim Watson; Joe Findaro; Johnny Amaral; Mike Burns; Pamela Russell; Sheila Greene; Susan Ramos; Tom Birmingham

Subject: Friends,

As tomorrow will be my last day of working for only Westlands, I wanted to express my deepest appreciation for the hard work you all do! Your efforts are of great significance to Westlands, its farmers and indeed to water users all across the Western states.

Our Friday meetings have been so rewarding as it was a chance to see your work first hand, to appreciate your great strategic minds at work and enjoy our great professional partnership in the conflicts we face.

Best to all, Jason

On Aug 13, 2015, at 12:49 PM, Karen Clark <kclark@westlandswater.org> wrote:

All,

Tom has a calendar conflict tomorrow so we won't have a PR/Legislation conference call.

If you have any questions, please let me know.

Sincerely,

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Johnny Amaral

Sent: Friday, August 14, 2015 6:40 AM

To: David Bernhardt; Dennis Cardoza; Catherine Karen; Denny Rehberg; Joe Findaro

Subject: Still want to do a 10 am call?

Best,

Johnny Amaral

From: Bernhardt, David L.
Sent: Friday, August 14, 2015 6:41 AM
To: Johnny Amaral
Subject: Re: Still want to do a 10 am call?

We verbally cancel when Tom cancels.

[REDACTED]

> On Aug 14, 2015, at 9:40 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:
>
>
>
>
>
> Best,
>
> Johnny Amaral
>
>

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From: Jason Peltier

Sent: Friday, August 14, 2015 4:14 PM

To: Tom Birmingham; Johnny Amaral; Gayle Holman; Dennis Cardoza; Denny Rehberg; Joe Findaro; David Bernhardt

Subject: Feinstein-Boxer water bill offers real drought relief - LA Times

<http://www.latimes.com/opinion/editorials/la-ed-drought-relief-legislation-congress-20150814-story.html>

From: Karen, Catherine
Sent: Thursday, August 27, 2015 12:15 PM
To: Johnny Amaral
Subject: RE: Still want to do a 10 am call?

Where can I call you?

CATHERINE KAREN
Counsel

Sidley Austin LLP
+1.202.736.8368
ckaren@sidley.com

-----Original Message-----

From: Johnny Amaral [<mailto:jamaryl@westlandswater.org>]
Sent: Friday, August 14, 2015 9:47 AM
To: David Bernhardt; Dennis Cardoza; Karen, Catherine; Denny Rehberg; Joe Findaro
Subject: Re: Still want to do a 10 am call?

Nevermind. David informed me that when Tom cancels the 10:30 call, you usually cancel the 10am.

I can fill you all in on what's happening out here on monday

Best,

Johnny Amaral

> On Aug 14, 2015, at 6:40 AM, "Johnny Amaral" <jamaryl@westlandswater.org> wrote:

>

>

>

>

> Best,

>

> Johnny Amaral

>

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If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.

From: Johnny Amaral
Sent: Thursday, August 27, 2015 12:31 PM
To: Karen, Catherine
Subject: Re: Still want to do a 10 am call?

559-594-9453

Best,

Johnny Amaral

> On Aug 27, 2015, at 12:16 PM, "Karen, Catherine" <ckaren@sidley.com> wrote:

>
> Where can I call you?
>
> CATHERINE KAREN
> Counsel
>
> Sidley Austin LLP
> +1.202.736.8368
> ckaren@sidley.com
> -----Original Message-----
> From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
> Sent: Friday, August 14, 2015 9:47 AM
> To: David Bernhardt; Dennis Cardoza; Karen, Catherine; Denny Rehberg; Joe Findaro
> Subject: Re: Still want to do a 10 am call?
>
>
> Nevermind. David informed me that when Tom cancels the 10:30 call, you usually cancel the 10am.
>
> I can fill you all in on what's happening out here on monday
>
> Best,
>
> Johnny Amaral
>
>

>> On Aug 14, 2015, at 6:40 AM, "Johnny Amaral" <jamaral@westlandswater.org> wrote:

>>
>>
>>
>>
>> Best,
>>
>> Johnny Amaral
>
>
>
>

> *****

> This e-mail is sent by a law firm and may contain information that is privileged or confidential.
> If you are not the intended recipient, please delete the e-mail and any attachments and notify us
> immediately.

>
> *****

From: Karen Clark

Sent: Friday, August 28, 2015 4:41 PM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; Catherine Karen; Dan Pope; 'David Bernhardt'; Dennis Cardoza; Denny Rehberg; 'Ed Manning'; Emily Lynn Smith; 'Gayle Holman'; Jennifer Walsh; 'Joe Findaro'; Johnny Amaral; 'Mike Burns'; Pamela Russell; Sheila Greene; 'Susan Ramos'

CC: Karen Clark

Subject: Strategy Planning Conference Call re: Drainage

Importance: High

All,

Please email me your availability for a conference call to discuss the drainage strategy for September 1, 2 and 3.

Thanks!

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Johnny Amaral

Sent: Friday, September 11, 2015 4:52 PM

To: Tom Birmingham; Mike Burns; Gayle Holman; Ryan A. Smith; Daniel O'Hanlon; David Bernhardt

Subject: Michael Doyle on Twitter: "3 House Dems (Garamendi, McNerney, Huffman) briefed on irrigation drainage settlement today; they aren't happy, #cawater"

<https://mobile.twitter.com/michaeldoyle10/status/642479405005172736>

Best,

Johnny Amaral

From: Johnny Amaral

Sent: Friday, September 11, 2015 6:51 PM

To: David Bernhardt; Dennis Cardoza; Denny Rehberg; Catherine Karen; Tom Birmingham; Mike Burns; Gayle Holman; 'Philip Williams'; Daniel O'Hanlon; Ryan A. Smith; Ed Manning; Carolyn Jensen; Patrick George

Subject: WASHINGTON: A San Joaquin Valley irrigation drainage settlement is reached, but questions remain | Environment | The Sun Herald

Fair....

<http://www.sunherald.com/2015/09/11/6409726/a-san-joaquin-valley-irrigation.html>

Best,

Johnny Amaral

From: Johnny Amaral
Sent: Saturday, September 12, 2015 6:48 AM
To: David Bernhardt; Dennis Cardoza; Denny Rehberg; Catherine Karen
Subject: Fwd: LA Times --

Best,

Johnny Amaral

Begin forwarded message:

From: Michael Burns <mburns@ka-pow.com>
Date: September 12, 2015 at 6:38:24 AM PDT
To: "'O'Hanlon, Daniel'" <dohanlon@kmtg.com>, "'Smith, Ryan A. (RSmith@BHFS.com)'" <RSmith@BHFS.com>, 'Johnny Amaral' <jamaral@westlandswater.org>, "'Gayle Holman (gholman@westlandswater.org)'" <gholman@westlandswater.org>
Cc: Patrick George <pgeorge@ka-pow.com>, "Tom Birmingham (tbirmingham@westlandswater.org)" <tbirmingham@westlandswater.org>
Subject: LA Times --

September 11, 2015

U.S. ready to resolve Westlands water dispute in San Joaquin Valley
By BETTINA BOXALL contact the reporter Environmental Issues

The federal government is poised to sign a settlement with the Westlands Water District that would resolve a decades-long legal fight over badly drained, tainted farmland on the west side of the San Joaquin Valley.

U.S. Interior Department officials on Friday told three Northern California congressmen that the department could sign the agreement as early as Tuesday.

"The deal is done. There is no more negotiation," said Rep. Jared Huffman, (D-San Rafael), who was briefed on the settlement along with Rep. Jerry McNerney (D-Stockton) and Rep. John Garamendi (D-Walnut Grove).

McNerney and Huffman said Interior representatives did not show them a copy of the proposed settlement, but informed the three legislators that it was similar to a 2013 draft agreement.

Under the draft, the U.S. Bureau of Reclamation would be relieved of its obligation to provide drainage to several hundred thousands of acres of Westlands cropland. The district would permanently retire 100,000 acres of ill-drained fields and agree to a cap on water deliveries that amounts to 75% of its current contract amount.

In return, the reclamation bureau would let Westlands off the hook for the roughly \$350 million the irrigation district owes federal taxpayers for construction of a portion of Central Valley Project facilities. The government would also lift limits on the size of Westlands farms eligible for subsidized water deliveries and give the district an open-ended water contract that did not

require periodic renewal.

The Interior Department declined to discuss the matter. "No settlement has been finalized at this point in time and therefore we are unable to comment in greater detail," Kevin Thompson, the agency's deputy director of communications, said in an email.

In an interview, Tom Birmingham, Westlands general manager, said he did not know when Interior would sign the agreement, but added "I'm hopeful it will be very, very soon."

Birmingham said he expects the district board to approve the settlement. Once signed by Interior and Westlands, the agreement would go to Congress for approval.

Westlands is the biggest - and most contentious - contractor in California's sprawling federal irrigation system. So a deal that changes the terms of its water contract and forgives its substantial debt will be heavily scrutinized.

"Westlands is going to get away with a lot here," McNerney contended.

Thanks to local geology and a high water table, the soil in a good portion of Westlands is loaded with mineral salts and selenium, a natural trace element. The salts are harmful to crops and when concentrated in field drainage, the selenium reaches levels that are toxic to wildlife.

After waterfowl in a wildlife refuge were poisoned by Westlands drain water in the 1980s, the reclamation bureau shut down the region's master drain. That led to decades of legal wrangling and ultimately a court order that the federal government was under legal obligation to provide drainage.

In 2007, the reclamation bureau proposed a \$2.7-billion project that would have permanently retired 200,000 acres of badly drained cropland and also called for treatment facilities to cleanse tainted drain water from other fields.

The high price tag doomed the proposal, spurring continued negotiations to settle the issue.

Under the pending settlement, Birmingham said "the government will save in excess of \$2 billion . will be indemnified against any liability resulting from the failure to provide drainage" and the district will assume responsibility to treat the drain water.

But environmentalists and others worry that changing Westlands' contract terms could give the district a firmer hold on water deliveries from the environmentally troubled Sacramento-San Joaquin River Delta. They also say the agreement won't end the vexing problem of tainted drainage that has long plagued the San Joaquin Valley's west side.

"They're clearly not solving the drainage problem and the broader impacts that have made that such a big deal for so long," Huffman said. "Westlands is not going to retire enough land. They're not going to commit to the kind of irrigation practices" outlined in the 2007 proposal.

"We're going to ask hard questions," he added.

bettina.boxall@latimes.com

Twitter: @boxall

Michael Burns
KP PUBLIC AFFAIRS
1201 K Street, Suite 800, Sacramento, CA 95814
p. 916.448.2162 m. 916.600.1271 f. 916.448.4923
w. www.ka-pow.com e. mburns@ka-pow.com

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-----Original Message-----

From: Michael Burns
Sent: Friday, September 11, 2015 7:26 AM
To: 'O'Hanlon, Daniel'; Smith, Ryan A. (RSmith@BHFS.com); Johnny Amaral; Gayle Holman (gholman@westlandswater.org)
Cc: Julie Reynolds; Patrick George
Subject: RE: Emailing: Settlement Factsheet, Timeline 9.9.15, WWD_Drainage_Internal_REACTIVE MEDIA MESSAGING_91015, Support letter, WWD_Press Release 9.9.2015, WWD_Drainage_TalkingPoints_9.9.2015, Talking Points and Background for WWD Members, WWD Package, Costa-V

Here's Patrick's recommendation on the timing of the briefings and release, we can discuss in our call later today:

If I read this correctly the deal will be out publicly on the 15th at around 5:00 pm - that is perfect. AP can file for stories that will be in the next day's paper. Fresno Bee (possibly Sac Bee) will also be able to file online at same time (which they will love). Also, if interior does call SF Chron and LAT and they don't bite they will be in the next day's cycle. Plus broadcast will report what the wire and Fres Bee is reporting that night. I say embargo lifts at 5:00 pm on 15th.

Michael Burns
KP PUBLIC AFFAIRS
1201 K Street, Suite 800, Sacramento, CA 95814 p. 916.448.2162 m. 916.600.1271 f. 916.448.4923 w. www.ka-pow.com e. mburns@ka-pow.com

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-----Original Message-----

From: O'Hanlon, Daniel [<mailto:dohanlon@kmtg.com>]
Sent: Thursday, September 10, 2015 3:33 PM
To: Michael Burns; Smith, Ryan A. (RSmith@BHFS.com); Johnny Amaral; Gayle Holman (gholman@westlandswater.org)
Cc: Julie Reynolds
Subject: RE: Emailing: Settlement Factsheet, Timeline 9.9.15,

WWD_Drainage_Internal_REACTIVE MEDIA MESSAGING_91015, Support letter, WWD_Press Release 9.9.2015, WWD_Drainage_TalkingPoints_9.9.2015, Talking Points and Background for WWD Members, WWD Package, Costa-V

Michael-

In answer to your question, the settlement agreement can be available for the press once both sides have signed it, which we expect will happen on the afternoon of the 15th. The Westlands Board will meet in the afternoon on the 15th beginning at 1:30 pm. If the Board takes it up in closed session before the end of the meeting, Tom could sign it and we could get the executed copy to the feds by about 3 pm. We need to send the executed copy to the feds immediately thereafter. Once that is done, the agreement could be available for the press. That likely means it could be available to the press late in the afternoon on the 15th.

The agreement will be filed with the court on the 16th; we have flexibility on the time.

An issue I raised today with Johnny and Gayle is how the timing of Interior's press release may influence whether we announce on the 15th or 16th. The Westlands approval will happen after 5 pm, Eastern time on the 15th. If Interior therefore won't issue a release until the 16th, and we want Interior in the lead, perhaps Westlands should announce on the 16th too, and after Interior? (That assumes that Interior will do a press release, something we don't know yet.)

Regarding the factsheet and other documents, it strikes me that when members of the public hear "drainage" they probably picture a ditch carrying water, possibly contaminated water, flowing from Westlands into a river where it flows to somewhere else outside of Westlands. Hence, they may be nervous about leaving Westlands in charge of avoiding impacts to that somewhere else. The reality is that no drainage water leaves Westlands, has not since the 1980s, and there are no plans to change that. If Westlands fails to adequately manage drainage within Westlands, the resulting harm will occur to lands within Westlands. (Some immediately neighboring districts may claim they are impacted by subsurface movement of groundwater, but those claims are not well founded.) I don't think we make that point anywhere in these documents. Perhaps we should?

Dan

-----Original Message-----

From: Michael Burns [<mailto:mburns@ka-pow.com>]

Sent: Thursday, September 10, 2015 2:51 PM

To: Smith, Ryan A. (RSmith@BHFS.com); O'Hanlon, Daniel; Johnny Amaral; Gayle Holman (gholman@westlandswater.org)

Cc: Julie Reynolds

Subject: Emailing: Settlement Factsheet, Timeline 9.9.15,
WWD_Drainage_Internal_REACTIVE MEDIA MESSAGING_91015, Support letter,
WWD_Press Release 9.9.2015, WWD_Drainage_TalkingPoints_9.9.2015, Talking Points and
Background for WWD Members, WWD Package, Costa-Valad

Attached is the packet of documents we are delivering to Tom. Please let me know if you have any additional edits. Ryan or Dan: Will the actual settlement agreement be available when we send the press release? I anticipate that some reporters will want to see the settlement agreement.

Your message is ready to be sent with the following file or link attachments:

Settlement Factsheet

Timeline 9.9.15

WWD_Drainage_Internal_REACTIVE MEDIA MESSAGING_91015 Support letter

WWD_Press Release 9.9.2015

WWD_Drainage_TalkingPoints_9.9.2015

Talking Points and Background for WWD Members WWD Package Costa-Valadao drainage settlement op-ed 9.2.15

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From: David Bernhardt

Sent: Monday, September 14, 2015 4:46 AM

To: Johnny Amaral

Subject: Today's call

Johnny: I am not going to be on the 1 p.m. call. I have had something come up that I need to address at that time. Ryan will participate. Also, I'm happy to provide you an update before 1 if you want.
David Bernhardt

[REDACTED]

From: Johnny Amaral

Sent: Tuesday, September 15, 2015 2:12 PM

To: David Bernhardt; Dennis Cardoza; Catherine Karen; Denny Rehberg; Ed Manning; Carolyn Jensen

Subject: Fwd: Statement of Westlands Water District on Settlement of Drainage Lawsuit

Best,

Johnny Amaral

Begin forwarded message:

From: "Gayle Holman, Public Affairs Rep" <gholman@westlandswater.org>

Date: September 15, 2015 at 2:09:44 PM PDT

To: jamaral@westlandswater.org

Subject: Statement of Westlands Water District on Settlement of Drainage Lawsuit

Reply-To: gholman@westlandswater.org



Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

PRESS RELEASE

September 15, 2015

For Immediate Release

Contact: Gayle Holman
(559) 241-6233

STATEMENT OF WESTLANDS WATER DISTRICT ON SETTLEMENT OF DRAINAGE LAWSUIT

FRESNO - The United States Department of Justice and Westlands Water District have approved a settlement, which, if approved by Congress, would end a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. It provides a fair and equitable solution for Westlands' landowners who lost the productive use of their land caused by Reclamation's failure to provide drainage services to those lands, while at the same time providing a cost savings of approximately \$3.5 billion to the United States.

The settlement has been the subject of comprehensive review by the Department of Justice, Department of the Interior and Westlands. After this extensive review, the parties determined the settlement to be the best path forward for the federal government and Westlands and its landowners. Congress must approve the settlement before it becomes effective.

In the 1960s, the San Luis Act mandated the construction of agricultural drainage facilities to serve lands covered by the expansion of the Central Valley Project. Construction on the drainage facilities was never completed, and in 1985, the San Luis Drain was closed and drainage service to Westlands was terminated.

After years of inaction by Reclamation, Westlands filed a claim against the Secretary of the Interior and Bureau of Reclamation to compel Reclamation to provide drainage service. In 2000, the United States Circuit Court of Appeals for the Ninth Circuit affirmed a decision in favor of Westlands and determined that the Secretary had a mandatory duty to provide drainage service under the San Luis Act. The settlement approved by Justice and Westlands acts as a global resolution, concluding decades of disputes and litigation over an environmental problem that has gone unaddressed.

The drainage settlement requires Westlands to assume full responsibility for drainage management within its boundaries. Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. The settlement relieves Westlands of repayment obligation for prior expenditures by the United States for construction of the Central Valley Project.

Under the terms of the settlement, the Department of the Interior will oversee Westlands' management of drainage. The settlement relieves taxpayers of a liability of approximately \$3.5 billion dollars and caps water deliveries to the District at seventy-five percent of its contract amount.

Westlands and the United States have agreed to work cooperatively to seek settlement of drainage claims brought by landowners against the United States in *Etchegoinberry v. United States*, a separate case pending in the United States Court of Federal Claims. However, Westlands will pay any compensation to landowners as a result of a settlement in the *Etchegoinberry* case, and Westlands will indemnify the United States against any future landowner claim.

The Westlands Water District is the most productive agricultural land in the U.S., generating \$3.5 billion in farm-related economic activities and more than one billion dollars' worth of food and fiber. Westlands' 700 family-owned farms feed local communities, California and the nation. Agriculture is the bedrock of life and this agricultural region is a critical asset for California.

###

See two-page Drainage Settlement Fact Sheet located [here](#) for more details.



Decades-long Drainage Issues Resolved

Settlement provides economic and environmental benefits for the San Joaquin Valley and California



THE AGREEMENT

This settlement resolves a decades-long dispute concerning the federal government's obligation to provide drainage for Central Valley farmers receiving water from the San Luis Unit of the Central Valley Project (CVP). The agreement provides that Westlands Water District will permanently retire a minimum of 100,000 acres from agricultural production, assume full responsibility for managing drainage in the District, and caps deliveries of CVP water at 75% of its contract quantity.

The Federal Government will relieve Westlands Water District of its existing repayment obligation for construction of the Central Valley Project. The federal Government will provide a permanent water contract with the District and remove the acreage limits.

Settlement preserves a robust economic future in the most productive agricultural region in the nation



Preserves San Joaquin Valley agricultural production

By setting appropriate parameters for land retirement in Westlands, the drainage settlement preserves the District's **700** family-owned, multi-generational farms that produce more than **\$1 billion** of food and fiber for California and the nation which generates about **\$3.5 billion** in farm-related economic activities.



Protects a critical source of jobs in the region

Through maintained agricultural production, the drainage settlement protects the livelihood of more than **50,000** people that live and work in the Westlands region and depend on Westlands' agricultural economy.



Supports Central Valley businesses that rely on agricultural production

The settlement ensures businesses that support farming will continue to have agriculture as the financial base of the region. For every 100 jobs in agriculture, including the food industry, there are **94** additional jobs created throughout the state. Every dollar of value added in farming and agricultural-related industries generates an additional **\$1.27** for the state economy.





Settlement transfers the drainage responsibility to Westlands – Westlands farmers already utilize best practices to handle drainage on their lands



Simultaneously resolves existing and future drainage management issues by transferring full responsibility to Westlands

Westlands will assume management of drainage resulting from agricultural irrigation, relieving the Bureau of Reclamation of its existing and future obligation. Westlands will implement comprehensive drainage solutions to preserve the soil and further reduce the volume of drain water, resulting in positive environmental outcomes.



Transfers responsibility of damaged lands from the federal government to Westlands

Westlands will compensate landowners within the District affected by historical drainage issues, saving government and taxpayer resources.



Calls for retirement of 100,000 acres to productive use – continuation of Westlands' efforts to repurpose lands

The settlement is a continuation of Westlands' efforts to repurpose and preserve the San Joaquin Valley environment. Approximately 100,000 acres of land, or 20 percent of the District, will be retired and redeployed for environmentally-friendly uses such as solar business power facilities. In addition to nine solar energy parks already underway with PG&E in the District, 17 more projects have been planned. Fish and wildlife resources will be enhanced through habitat restoration projects.



Resolves long-standing dispute and lays the foundation for a path forward in the District



Relieves the government of drainage liability in the Westlands region

Westlands' assumes responsibility to manage drainage, relieving taxpayers of a multi-billion dollar burden (approximately \$3.5 billion). This makes the California economy and taxpayers winners in this long-awaited deal.



Ends the uncertainty around the District and allows the community to plan for its economic future

The settlement allows for local governments to move forward with their plans to enhance thousands of agricultural jobs. These jobs support a region that accounts for one-third of California's field, vegetable, fruit and nut crop production.



[Forward this email](#)



This email was sent to jamaral@westlandswater.org by gholman@westlandswater.org | [Update Profile/Email Address](#) | Rapid removal with [SafeUnsubscribe™](#) | [About our service provider](#).



Westlands Water District | 3130 N. Fresno Street | P.O. Box 6056 | Fresno | CA | 93703-6056

From: David Bernhardt
Sent: Tuesday, September 15, 2015 3:28 PM
To: Thomas W. (Tom) Birmingham Esq.
Subject: Ryan cell

[REDACTED]

David Bernhardt

[REDACTED]

From: DCardoza@foley.com

Sent: Wednesday, September 16, 2015 10:38 AM

To: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Rep. Jim Costa; Scott Petersen

Subject: Heads Up

Just left deSaulnier office and Huffman and Co are circulating requests for quotes for Press releases! All hands on deck!

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0>

Washington, DC 20007-5109<x-apple-data-detectors://0/0>

Phone: 202.295-4015

Fax: 202.672.5399<tel:202.672.5399>

Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: Petersen, Scott

Sent: Wednesday, September 16, 2015 11:53 AM

To: Costa, Jim; DCardoza@foley.com

CC: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Lopez, Juan; Solberg, Kristina; Grady, Donald

Subject: RE: Heads Up

FYI -- this is the statement put out by Reclamation today to AP, E&E News and California news wire:

Statement by Commissioner Estevan López
Bureau of Reclamation

"Managing, developing and protecting water resources is the Bureau of Reclamation's highest priority. Today's announcement of a settlement with the Westlands Water District addresses Reclamation's obligation to provide drainage service to the San Luis Unit of the Central Valley Project in a manner consistent with water management objectives in California. It enables Reclamation to continue making strategic investments to address California's water resource challenges while potentially saving taxpayers up to \$3.5 billion. Without the settlement, the financial liability mandated by a court-imposed obligation would jeopardize important investments in conservation, environmental restoration and water infrastructure. We look forward to working with Congress and all interested parties as the settlement is reviewed in the legislative process."

J. Scott Petersen, P.E.
Deputy Chief of Staff
Rep. Jim Costa (CA-16)

From: DCardoza@foley.com

Sent: Wednesday, September 16, 2015 1:27 PM

To: 'Costa, Jim'

CC: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com

Subject: RE: Heads Up

Thanks Jim,

Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallwell staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff, Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?

Jennifer and I also recommend that if you can get a copy of the letter that Huffman is circulating, that you put out a "fiction" "Fact" comparison to debunk his arguments.

Thanks for all the great work Jim and Scott!

Regards,

Dennis

-----Original Message-----

From: Costa, Jim [mailto:████████@████████████████]

Sent: Wednesday, September 16, 2015 2:38 PM

To: Cardoza, Dennis A.

Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald

Subject: Re: Heads Up

We are just about finished with our Op-Ed piece, we can also do local press. Dennis we need to meet with the following to hope they don't sign some letter Juan Vargas, Tony Cardenas, Pete Aguilar, Xavier Beserra, Scott Peters, Susan Davis, Sam Farr & whoever else we can think of Jim

We should also get Maria Guitierrez involved !!!!!

Jim Costa

> On Sep 16, 2015, at 12:37 PM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

>

> Just left deSaulnier office and Huffman and Co are circulating requests for quotes for Press releases! All hands on deck!

>

>

>

> Congressman Dennis A. Cardoza

> Foley & Lardner LLP

> Suite 600

> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC

> 20007-5109<x-apple-data-detectors://0/0>

> Phone: 202.295-4015

> Fax: 202.672.5399<tel:202.672.5399>

> Email: dcardoza@foley.com<mailto:dcardoza@foley.com>

>

>

> Sent from my iPhone

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From: Petersen, Scott

Sent: Wednesday, September 16, 2015 2:10 PM

To: Costa, Jim; DCardoza@foley.com

CC: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com

Subject: RE: Heads Up

Attachments: IF10245.pdf

To clarify, there is no letter circulating. The Nor Cal Dems are generating and coordinating press statements in opposition to the deal, but from what I've heard from staff the majority of the Democratic delegation isn't going to stick its head out on this issue without knowing much about it and is in a "wait and see" mode.

I'm planning to circulate the attached CRS background on the issue and Commissioner Lopez's statement to the Resources staffers in the California delegation.

J. Scott Petersen, P.E.
Deputy Chief of Staff
Rep. Jim Costa (CA-16)

-----Original Message-----

From: Costa, Jim

Sent: Wednesday, September 16, 2015 4:38 PM

To: DCardoza@foley.com

Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com

Subject: Re: Heads Up

Yes I agree,,, ignore the last list and we will try to get a copy of the letter. The Fact vs Fiction is a good idea,, what about bringing Maria G. Involving Hispanics

Sent from my iPhone

> On Sep 16, 2015, at 4:27 PM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

>

> Thanks Jim,

>

> Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallow staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff, Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?

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> Dennis

> -----Original Message-----

> From: Costa, Jim [mailto:████████@████████████████████]

> Sent: Wednesday, September 16, 2015 2:38 PM

> To: Cardoza, Dennis A.

> Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason

> Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott;
> Lopez, Juan; Solberg, Kristina; Grady, Donald
> Subject: Re: Heads Up

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June 25, 2015

Westlands Drainage Settlement: A Primer

Background

The Westlands Water District provides water to users in the Western San Joaquin Valley. It is located within the San Luis Unit of the U.S. Bureau of Reclamation's ("Reclamation") Central Valley Project. In its initial feasibility report for the San Luis Unit, Reclamation indicated that drainage facilities would be required to carry away waste irrigation water in order to prevent salt accumulations that would render the soil unfit for irrigation. For that reason, the San Luis Act, P.L. 86-488, 74 Stat. 156 (1960), which authorized the creation of the San Luis Unit, prohibited Reclamation from commencing construction of the San Luis Unit until it either received assurances from the state of California that it would provide a master drainage outlet for the San Joaquin Valley or Reclamation had provided for the construction of an "interceptor drain" (as described in Reclamation's feasibility study) that would meet the drainage requirements of the San Luis Unit. After the state of California notified Reclamation that it would not provide a master drain for the San Joaquin Valley, Reclamation informed Congress that it would make provision for the construction of the San Luis interceptor drain.

Reclamation began delivering water to Westlands Water District ("Westlands") in 1967, but construction of the interceptor drain did not begin until 1968. Between 1968 and 1975, Reclamation constructed over 80 miles of the planned 207 miles of the interceptor drain before halting construction of the interceptor drain, citing public concerns. *Firebaugh Canal Co. v. United States*, 203 F.3d 568, 571 (9th Cir. 2000). The interceptor drain originally was intended to end at the confluence of the Sacramento and San Joaquin Rivers Delta with San Francisco Bay ("Bay-Delta") near Contra Costa, but in 1975 it reached only to the Kesterson Reservoir, which originally was meant to serve as a regulating reservoir. However, beginning in 1964, riders to appropriations legislation prohibited Reclamation from selecting a terminus for the interceptor drain until it and the state of California had established water quality standards for discharge of the drainage water. As of 1975, no such standards had been established. Thus, when Reclamation halted construction, Kesterson Reservoir served as a temporary terminus for the drain.

In 1983, studies revealed embryo deformity and mortality among waterfowl nesting at Kesterson Reservoir. It was suspected that these problems were caused by selenium from soils in Westlands that had been carried to Kesterson Reservoir through the drain. For that reason, in 1985, Reclamation announced that it would close Kesterson Reservoir, and by June 1986 it had plugged the drains in Westlands and closed the interceptor drain. Since then, Reclamation has not provided any drainage in Westlands.

Firebaugh Canal/Sumner Peck Ranch Litigation

After Reclamation closed Kesterson Reservoir and the interceptor drain, in *Firebaugh Canal Co. v. United States*, No. CV-F-88-634 (E.D. Cal.), and *Sumner Peck Ranch, Inc. v. Bureau of Reclamation*, No. CV-F-91-048, landowners, from both within and without the San Luis Unit, filed suit against Reclamation (Westlands is both a co-defendant and a cross-claimant against Reclamation) to force Reclamation to complete a master drain to the Bay-Delta, as envisioned in Reclamation's original feasibility study, among other reasons. In 1995, the United States District Court for the Eastern District of California found that the San Luis Act required Reclamation to provide drainage to the San Luis Unit, and that the appropriations riders had not relieved it of this duty. The district court therefore ordered Reclamation to obtain a discharge permit from the California Water Resources Control Board in order to complete the interceptor.

In 2000, the United States Court of Appeals for the Ninth Circuit affirmed the district court's finding that the San Luis Act required Reclamation to provide drainage within the San Luis Unit, and that it had failed to comply with this duty since it plugged and closed the interceptor drain in 1986. However, the Ninth Circuit concluded that subsequent acts of Congress had granted Reclamation discretion in how it would comply with this duty other than through the interceptor drain envisioned in the original feasibility study. For that reason, the court concluded, the district court had overstepped its authority when it required Reclamation to apply for a discharge permit to complete the interceptor drain.

The Westlands Settlement Agreement

Following the Ninth Circuit's decision, the district court ordered Reclamation to develop a detailed plan of action for complying with the San Luis Act. In April 2001, Reclamation submitted its initial plan of action, which called for an analysis of feasible alternatives for providing drainage within the San Luis Unit. From these analyses, Reclamation developed three categories of drainage service methods: (1) in-valley alternatives; (2) out-of-valley alternatives; and (3) beneficial use alternatives. Although Reclamation identified several variations within each of these alternatives, generally the in-valley alternatives focused on options that would dispose of the drainage water within the San Joaquin Valley, the out-of-valley alternatives involved disposal of drainage water in the Pacific Ocean and/or the Bay-Delta, and the beneficial use alternatives would employ reverse osmosis technology to clean the drainage water, after which the clean water and possibly the salts removed from the drainage would be put to beneficial

use. Following several years of planning reports and environmental analyses, in March 2007 Reclamation issued a Record of Decision (ROD), in which it selected an option that would involve a combination of in-valley disposal and land retirement (i.e., removal of certain land from agricultural use). In a March 2008 feasibility study, Reclamation estimated that the total cost of construction of the drainage plan selected in the ROD would come to \$2.69 billion. The feasibility study also identified several legislative changes that would be necessary to construct the drainage plan selected by the ROD. These changes included an increase in appropriations authority, which at that time was limited to \$429 million for construction of the drainage system. Additionally, the feasibility study determined that Reclamation would need to seek legislative authorization to charge water districts less than the full capital, operation, and maintenance costs associated with the ROD drainage plan, which otherwise would be required by law, as the feasibility study found that the districts would not be able to pay these costs in full. Reclamation submitted the feasibility study to Congress in July 2008.

Although no legislation has been passed to increase Reclamation's construction authorization or to relieve the water districts of their full payment obligations under existing law, Reclamation has proceeded with some portions of the ROD drainage plan. For instance, according to an April 2015 status report filed with the district court, Reclamation has constructed a demonstration treatment plant in the northern portion of the San Luis Unit, which began test operations in 2014 (although testing later was suspended due to problems with certain parts of the bioreactor at the plant).

In April 2015, Reclamation informed the district court that it and Westlands had completed a draft settlement agreement, which had been submitted to the Department of Justice for review. Reclamation did not provide the court with any specifics; however, a document dated December 6, 2013, titled "Principles of Agreement for a Proposed Settlement between the United States and Westlands Water District Regarding Drainage" ("Principles of Agreement"), purports to lay out several provisions that Reclamation may intend to include in the draft agreement currently under review (it appears that Reclamation was involved in drafting the Principles of Agreement). Among other things, the Principles of Agreement provide the following:

1. Congress would amend the San Luis Act to relieve Reclamation of its obligations to provide drainage in the San Luis Unit;
2. Westlands would assume legal responsibility for management of drainage water for lands in its boundaries;
3. Reclamation would relieve Westlands of its existing capital repayment obligations;
4. Landowners within the Westlands Water District would be exempt from the Reclamation Reform Act's (P.L. 97-293, 96 Stat. 1263 (1982)) acreage restrictions and full-cost pricing provisions;

5. Reclamation would convert Westlands' water service contract to a repayment contract;
6. Reclamation would be allowed to enter into a water service contract for delivery of water to Lemoore Naval Air Station;
7. Westlands' water deliveries would be capped at 75% of the amount allowed under existing contracts;
8. Westlands would permanently retire 100,000 acres of lands in its service area, including land that it had acquired through prior settlements, and that these lands would be used for management of drain water, renewable energy projects, habitat restoration projects, or other purposes approved by Reclamation;
9. Westlands would indemnify Reclamation against any takings claims by individual landowners based on Reclamation's alleged failure to provide drainage; and
10. Westlands would intervene in *Etchegoinberry v. United States*, No. 11-564-L (Fed. Cl.), for purposes of settlement, and Westlands would be responsible for any compensation due to landowners within its service area (this litigation involves takings claims based on alleged damage to property caused by the lack of drainage in the San Luis Unit).

The Principles of Agreement provide that points 1-6 listed above would be included in enabling legislation (upon which, presumably, any settlement would be contingent). However, it is unclear which, if any, of the points listed above are in the draft settlement agreement under review by the Department of Justice.

Issues for Congress

As outlined in the Principles of Agreement, it is possible that some of the identified actions may require congressional authorization. Additionally, the \$2.69 billion cost for the drainage plan selected in the 2008 ROD was of concern to many observers at the time and, in part, has led to the ongoing negotiations. If a settlement agreement is not reached, Congress may be faced with the decision of whether to appropriate significant funding for a drainage solution.

Contrariwise, Congress could relieve Reclamation of its obligation under the San Luis Act to provide drainage by amending the act itself. However, if Congress were to do so, additional questions would remain regarding Reclamation's obligations under existing contracts, as well as its liability to landowners for possible takings.

Travis H. Mallen, tmallen@crs.loc.gov, 7-0796

IF10245

From: Tom Birmingham

Sent: Wednesday, September 16, 2015 2:47 PM

To: 'Petersen, Scott'

CC: jamaral@westlandswater.org; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; JWalsh@foley.com; 'Costa, Jim'; DCardoza@foley.com

Subject: RE: Heads Up

Scott,

Thank you for the update. I think the most we can ask of members is to "wait and see." As you know, the Obama administration is going to vigorously support the settlement, and I have spoken with Mike Connor who said he is prepared to respond to any comments coming from opponents who are intentionally misrepresenting the agreement.

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Thank you,
Tom

-----Original Message-----

From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]

Sent: Wednesday, September 16, 2015 2:10 PM

To: Costa, Jim <[REDACTED]@[REDACTED] DCardoza@foley.com

Cc: jamaral@westlandswater.org; Tom Birmingham <tbirmingham@westlandswater.org>; Dan Nelson <dan.nelson@sldmwa.org>; Jason Peltier <jason.peltier@sldmwa.org>; David Longly Bernhardt <dbernhardt@bhfs.com>; Denny Rehberg <drehberg@mercuryllc.com>; Lopez, Juan <Juan.Lopez@mail.house.gov>; Solberg, Kristina <Kristina.Solberg@mail.house.gov>; Grady, Donald <Donald.Grady@mail.house.gov>; JWalsh@foley.com
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J. Scott Petersen, P.E.
Deputy Chief of Staff
Rep. Jim Costa (CA-16)

-----Original Message-----

From: Costa, Jim

Sent: Wednesday, September 16, 2015 4:38 PM

To: DCardoza@foley.com

Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com
Subject: Re: Heads Up

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Sent from my iPhone

> On Sep 16, 2015, at 4:27 PM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

>
> Thanks Jim,
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> Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallwell staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff, Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?
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> Regards,
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> Dennis
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> From: Costa, Jim [mailto: [REDACTED]@ [REDACTED] [REDACTED]]
> Sent: Wednesday, September 16, 2015 2:38 PM
> To: Cardoza, Dennis A.
> Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason
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>> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
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Sent: Wednesday, September 16, 2015 2:54 PM

To: Tom Birmingham

CC: jamaral@westlandswater.org; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com; Costa, Jim; DCardoza@foley.com

Subject: Re: Heads Up

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> Deputy Chief of Staff

> Rep. Jim Costa (CA-16)

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From: Tom Birmingham
Sent: Wednesday, September 16, 2015 2:59 PM
To: 'Petersen, Scott'
Subject: RE: Heads Up

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Sent: Wednesday, September 16, 2015 2:54 PM
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From: Tom Birmingham
Sent: Wednesday, September 16, 2015 3:08 PM
To: 'Petersen, Scott'
Subject: RE: Heads Up

I am sorry that we have created so much work for you, but thanks. We are indebted to you.

-----Original Message-----

From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]
Sent: Wednesday, September 16, 2015 3:06 PM
To: Tom Birmingham <tbirmingham@westlandswater.org>
Cc: Costa, Jim <[REDACTED]@[REDACTED] [REDACTED]>
Subject: Re: Heads Up

I did. We incorporated them. McEwen separately decided that he's going to write a favorable editorial from the Bee on the settlement. I'm sure Jim will call you to update you on his conversation with McEwen.

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>>> Thanks for all the great work Jim and Scott!

>>> Regards,

>>> Dennis

>>> -----Original Message-----

>>> From: Costa, Jim [mailto:[REDACTED]@[REDACTED]]
>>> Sent: Wednesday, September 16, 2015 2:38 PM
>>> To: Cardoza, Dennis A.
>>> Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason

>>> Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott;
>>> Lopez, Juan; Solberg, Kristina; Grady, Donald
>>> Subject: Re: Heads Up
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>>> We are just about finished with our Op-Ed piece ,, we can also do
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>>>> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
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>>>> Sent from my iPhone
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From: JWalsh@foley.com

Sent: Thursday, September 17, 2015 9:10 AM

To: 'Tom Birmingham'; 'Petersen, Scott'

CC: jamaral@westlandswater.org; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; 'Costa, Jim'; DCardoza@foley.com

Subject: RE: Heads Up

All-

I received the email below from a colleague in the House California Democratic delegation. It appears to have been sent to most of the Democratic offices in the delegation. Apologies if you have already seen this.

Jennifer

From: Marcus G. Faust [<mailto:MarcusFaust@msn.com>]

Sent: Thursday, September 17, 2015 10:57 AM

To: Marcus G. Faust

Subject: CCWD Concerns and Questions with Westlands Settlement Agreement

As you remember during our February 2015 legislative staff briefing, we reviewed the elements of possible impacts from a Westlands drainage settlement on the Delta and CCWD. As is always the case, "the devil is in the details" and we are still reviewing the agreement. Our preliminary analysis confirms the issues/concerns we discussed in February. They are;

- * Impacts to delta water quality (retiring the impacted lands is beneficial but there is still drainage and what will Westlands do with it and how fast will they be required to act?

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Marcus G. Faust, Attorney at Law

332 Constitution Avenue, N.E.

Washington, D.C. 20002

MarcusFaust@msn.com

(202) 547-5400

Jennifer F. Walsh

Director, Public Affairs

Foley & Lardner LLP

3000 K Street, N.W. | Suite 600

Washington, DC 20007-5109

P 202.295.4762

Visit Foley.com

-----Original Message-----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]

Sent: Wednesday, September 16, 2015 5:47 PM

To: 'Petersen, Scott'

Cc: jamaral@westlandswater.org; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; Walsh, Jennifer F.; 'Costa, Jim'; Cardoza, Dennis A.

Subject: RE: Heads Up

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Could you suggest to other members that before they take a position on the settlement they wait to hear from the administration or that they contact the Deputy Secretary to get his take on the agreement? I believe that Mike is going to be the settlement's best advocate, and it will better for the members to communicate directly with him.

Thank you,
Tom

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From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]

Sent: Wednesday, September 16, 2015 2:10 PM

To: Costa, Jim <[REDACTED]@[REDACTED] DCardoza@foley.com

Cc: jamaral@westlandswater.org; Tom Birmingham <tobirmingham@westlandswater.org>; Dan Nelson <dan.nelson@sldmwa.org>; Jason Peltier <jason.peltier@sldmwa.org>; David Longly Bernhardt <dbernhardt@bhfs.com>; Denny Rehberg <drehberg@mercuryllc.com>; Lopez, Juan <Juan.Lopez@mail.house.gov>; Solberg, Kristina <Kristina.Solberg@mail.house.gov>; Grady, Donald <Donald.Grady@mail.house.gov>; JWalsh@foley.com

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J. Scott Petersen, P.E.
Deputy Chief of Staff
Rep. Jim Costa (CA-16)

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From: Johnny Amaral

Sent: Thursday, September 17, 2015 9:39 AM

To: JWalsh@foley.com; 'Tom Birmingham'; 'Petersen, Scott'

CC: 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; 'Costa, Jim'; DCardoza@foley.com

Subject: RE: Heads Up

First of all, this guy seems to be the first attorney I've ever encountered who actually admits he doesn't know much....

Secondly, every one of these points needs to be responded to. Perhaps the responses to these claims can come from DoI. If not, we have to do it.

Scott and Jim...perhaps you can add these assertions and the responses to the "fact/fiction" piece you're working on?

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Jennifer F. Walsh
Director, Public Affairs

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Subject: Re: Heads Up

Who is CCWD? If it is who I think it is I may be able to quash it. Dennis

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

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Washington, DC 20007-5109<x-apple-data-detectors://0/0>

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As you remember during our February 2015 legislative staff briefing, we reviewed the elements of possible impacts from a Westlands drainage settlement on the Delta and CCWD. As is always the case, "the devil is in the details" and we are still reviewing the agreement. Our preliminary analysis confirms the issues/concerns we discussed in February. They are;

- * Impacts to delta water quality (retiring the impacted lands is beneficial but there is still drainage and what will Westlands do with it and how fast will they be required to act?
- * There is less oversight on Westlands drainage impacts and they have less resources than Reclamation to deal with drainage impacts. Westlands now gets ownership of several CVP facilities including the drain itself. We ask, does this mean they will use it to convey drainage to the Delta? The agreement does not contain any operating directions or limitations on the use of these CVP facilities.
- * Impacts to our CVP water supply allocation (if Westlands gets a better water supply, somebody else's has to get worse - it's a zero

sum game). With the retired lands, irrigation amounts go from 1.2MAF to 900TAF, but their allocations continue to be based on 1.2MAF (e.g. 25% of 1.2MAF is 300TAF, 25% of 900TAF is 225TAF). We asked which CVP contractor gets shorted because of this?

* There is a legal question regarding whether Westlands changing from water service agreements to repayment contracts puts them in a higher priority for water.

* Impacts to shared CVP finances and cost allocation. If Westlands repayment debt is forgiven, does that mean they drop out of a mutual cost pool so that the rest of us are left with a bigger share of the bureau's fixed operating costs? The agreement says no other contractor cost goes up because of Westlands debt forgiveness but agreement does not specify how this applies to future costs e.g. if Shasta dam gets seismically upgraded in the future.

Marcus G. Faust, Attorney at Law
332 Constitution Avenue, N.E.
Washington, D.C. 20002
MarcusFaust@msn.com<<mailto:MarcusFaust@msn.com>>
(202) 547-5400

Jennifer F. Walsh
Director, Public Affairs

Foley & Lardner LLP
3000 K Street, N.W. | Suite 600
Washington, DC 20007-5109
P 202.295.4762

Visit Foley.com<<http://Foley.com>>

-----Original Message-----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]

Sent: Wednesday, September 16, 2015 5:47 PM

To: 'Petersen, Scott'

Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; Walsh, Jennifer F.; 'Costa, Jim'; Cardoza, Dennis A.

Subject: RE: Heads Up

Scott,

Thank you for the update. I think the most we can ask of members is to "wait and see." As you know, the Obama administration is going to vigorously support the settlement, and I have spoken with Mike Connor who said he is prepared to respond to any comments coming from opponents who are intentionally misrepresenting the agreement.

Could you suggest to other members that before they take a position on the settlement they wait to hear from the administration or that they contact the Deputy Secretary to get his take on the agreement? I believe that Mike is going to be the settlement's best advocate, and it will better for the members to communicate directly with him.

Thank you,
Tom

-----Original Message-----

From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]

Sent: Wednesday, September 16, 2015 2:10 PM

To: Costa, Jim <[REDACTED]@[REDACTED]><[mailto:\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])> DCardoza@foley.com<<mailto:DCardoza@foley.com>>

Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham <tbirmingham@westlandswater.org><<mailto:tbirmingham@westlandswater.org>>; Dan Nelson <dan.nelson@sldmwa.org><<mailto:dan.nelson@sldmwa.org>>; Jason Peltier <jason.peltier@sldmwa.org><<mailto:jason.peltier@sldmwa.org>>; David Longly Bernhardt <dbernhardt@bhfs.com><<mailto:dbernhardt@bhfs.com>>; Denny Rehberg <drehberg@mercuryllc.com><<mailto:drehberg@mercuryllc.com>>; Lopez, Juan <Juan.Lopez@mail.house.gov><<mailto:Juan.Lopez@mail.house.gov>>; Solberg, Kristina

<Kristina.Solberg@mail.house.gov<<mailto:Kristina.Solberg@mail.house.gov>>>; Grady, Donald
<Donald.Grady@mail.house.gov<<mailto:Donald.Grady@mail.house.gov>>>; JWalsh@foley.com<<mailto:JWalsh@foley.com>>
Subject: RE: Heads Up

To clarify, there is no letter circulating. The Nor Cal Dems are generating and coordinating press statements in opposition to the deal, but from what I've heard from staff the majority of the Democratic delegation isn't going to stick its head out on this issue without knowing much about it and is in a "wait and see" mode.

I'm planning to circulate the attached CRS background on the issue and Commissioner Lopez's statement to the Resources staffers in the California delegation.

J. Scott Petersen, P.E.
Deputy Chief of Staff
Rep. Jim Costa (CA-16)

-----Original Message-----

From: Costa, Jim
Sent: Wednesday, September 16, 2015 4:38 PM
To: DCardoza@foley.com<<mailto:DCardoza@foley.com>>
Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com<<mailto:JWalsh@foley.com>>
Subject: Re: Heads Up

Yes I agree ,, ignore the last list and we will try to get a copy of the letter. The Fact vs Fiction is a good idea ,, what about bringing Maria G. Involving Hispanics

Sent from my iPhone

On Sep 16, 2015, at 4:27 PM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>"
<DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:

Thanks Jim,

Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallwell staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff, Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?

Jennifer and I also recommend that if you can get a copy of the letter that Huffman is circulating, that you put out a "fiction" "Fact" comparison to debunk his arguments.

Thanks for all the great work Jim and Scott!

Regards,

Dennis

-----Original Message-----

From: Costa, Jim [[mailto: \[REDACTED\]@ \[REDACTED\]](mailto: [REDACTED]@ [REDACTED])]
Sent: Wednesday, September 16, 2015 2:38 PM
To: Cardoza, Dennis A.
Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald
Subject: Re: Heads Up

We are just about finished with our Op-Ed piece ,, we can also do local press. Dennis we need to meet with the following to hope they

don't sign some letter Juan Vargas ,, Tony Cardenas ,, Pete Agular ,, Xavier Beserra ,, Scott Peters ,, Susan Davis ,, Sam Farr & whoever else we can think of Jim

We should also get Maria Guitierrez involved !!!!!

Jim Costa

On Sep 16, 2015, at 12:37 PM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>" <DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:

Just left deSaulnier office and Huffman and Co are circulating requests for quotes for Press releases! All hands on deck!

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>><<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: Johnny Amaral
Sent: Thursday, September 17, 2015 10:17 AM
To: DCardoza@foley.com
Subject: RE: Heads Up

Is it contra costa water district?

-----Original Message-----

From: DCardoza@foley.com [<mailto:DCardoza@foley.com>]

Sent: Thursday, September 17, 2015 10:05 AM

To: JWalsh@foley.com

Cc: Tom Birmingham; Petersen, Scott; jamaral@westlandswater.org; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Lopez, Juan; Solberg, Kristina; Grady, Donald; Costa, Jim

Subject: Re: Heads Up

Who is CCWD? If it is who I think it is I may be able to quash it. Dennis

Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>

Phone: 202.295-4015

Fax: 202.672.5399<tel:202.672.5399>

Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On Sep 17, 2015, at 12:10 PM, Walsh, Jennifer F. <JWalsh@foley.com<<mailto:JWalsh@foley.com>>> wrote:

All-

I received the email below from a colleague in the House California Democratic delegation. It appears to have been sent to most of the Democratic offices in the delegation. Apologies if you have already seen this.

Jennifer

From: Marcus G. Faust [<mailto:MarcusFaust@msn.com>]

Sent: Thursday, September 17, 2015 10:57 AM

To: Marcus G. Faust

Subject: CCWD Concerns and Questions with Westlands Settlement Agreement

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Director, Public Affairs

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Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham

<tbermingham@westlandswater.org<<mailto:tbermingham@westlandswater.org>>>; Dan Nelson
<dan.nelson@sldmwa.org<<mailto:dan.nelson@sldmwa.org>>>; Jason Peltier
<jason.peltier@sldmwa.org<<mailto:jason.peltier@sldmwa.org>>>; David Longly Bernhardt
<dbernhardt@bhfs.com<<mailto:dbernhardt@bhfs.com>>>; Denny Rehberg
<drehberg@mercuryllc.com<<mailto:drehberg@mercuryllc.com>>>; Lopez, Juan
<Juan.Lopez@mail.house.gov<<mailto:Juan.Lopez@mail.house.gov>>>; Solberg, Kristina
<Kristina.Solberg@mail.house.gov<<mailto:Kristina.Solberg@mail.house.gov>>>; Grady, Donald
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Thanks for all the great work Jim and Scott!

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Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald
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We should also get Maria Guitierrez involved !!!!!

Jim Costa

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Congressman Dennis A. Cardoza
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From: Johnny Amaral

Sent: Thursday, September 17, 2015 10:18 AM

To: DCardoza@foley.com; JWalsh@foley.com

CC: 'Tom Birmingham'; 'Petersen, Scott'; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; 'Costa, Jim'

Subject: RE: Heads Up

<http://www.opensecrets.org/lobby/lobbyist.php?id=Y0000040327L>

Contra Costa Water district is one of his clients

-----Original Message-----

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Congressman Dennis A. Cardoza

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>

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Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

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Washington, DC 20007-5109
P 202.295.4762

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-----Original Message-----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]

Sent: Wednesday, September 16, 2015 5:47 PM

To: 'Petersen, Scott'

Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; Walsh, Jennifer F.; 'Costa, Jim'; Cardoza, Dennis A.

Subject: RE: Heads Up

Scott,

Thank you for the update. I think the most we can ask of members is to "wait and see." As you know, the Obama administration is going to vigorously support the settlement, and I have spoken with Mike Connor who said he is prepared to respond to any comments coming from opponents who are intentionally misrepresenting the agreement.

Could you suggest to other members that before they take a position on the settlement they wait to hear from the administration or that they contact the Deputy Secretary to get his take on the agreement? I believe that Mike is going to be the settlement's best advocate, and it will better for the members to communicate directly with him.

Thank you,
Tom

-----Original Message-----

From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]

Sent: Wednesday, September 16, 2015 2:10 PM

To: Costa, Jim <[REDACTED]@[REDACTED]> <[mailto:\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])> DCardoza@foley.com<<mailto:DCardoza@foley.com>>

Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham
<tbingham@westlandswater.org<<mailto:tbingham@westlandswater.org>>>; Dan Nelson

<dan.nelson@sldmwa.org<<mailto:dan.nelson@sldmwa.org>>>; Jason Peltier

<jason.peltier@sldmwa.org<<mailto:jason.peltier@sldmwa.org>>>; David Longly Bernhardt

<dbernhardt@bhfs.com<<mailto:dbernhardt@bhfs.com>>>; Denny Rehberg

<drehberg@mercuryllc.com<<mailto:drehberg@mercuryllc.com>>>; Lopez, Juan

<Juan.Lopez@mail.house.gov<<mailto:Juan.Lopez@mail.house.gov>>>; Solberg, Kristina

<Kristina.Solberg@mail.house.gov<<mailto:Kristina.Solberg@mail.house.gov>>>; Grady, Donald

<Donald.Grady@mail.house.gov<<mailto:Donald.Grady@mail.house.gov>>>; JWalsh@foley.com<<mailto:JWalsh@foley.com>>

Subject: RE: Heads Up

To clarify, there is no letter circulating. The Nor Cal Dems are generating and coordinating press statements in opposition to the deal, but from what I've heard from staff the majority of the Democratic delegation isn't going to stick its head out on this issue without knowing much about it and is in a "wait and see" mode.

I'm planning to circulate the attached CRS background on the issue and Commissioner Lopez's statement to the Resources staffers in the California delegation.

J. Scott Petersen, P.E.

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

-----Original Message-----

From: Costa, Jim

Sent: Wednesday, September 16, 2015 4:38 PM

To: DCardoza@foley.com<<mailto:DCardoza@foley.com>>

Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly
Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald;

JWalsh@foley.com<<mailto:JWalsh@foley.com>>

Subject: Re: Heads Up

Yes I agree ,, ignore the last list and we will try to get a copy of the letter. The Fact vs Fiction is a good idea ,, what about bringing Maria G. Involving Hispanics

Sent from my iPhone

On Sep 16, 2015, at 4:27 PM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>"

<DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:

Thanks Jim,

Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallwell staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff, Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?

Jennifer and I also recommend that if you can get a copy of the letter that Huffman is circulating, that you put out a "fiction" "Fact" comparison to debunk his arguments.

Thanks for all the great work Jim and Scott!

Regards,

Dennis

-----Original Message-----

From: Costa, Jim [mailto: [REDACTED]@ [REDACTED] : [REDACTED]
Sent: Wednesday, September 16, 2015 2:38 PM
To: Cardoza, Dennis A.
Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald
Subject: Re: Heads Up

We are just about finished with our Op-Ed piece ,, we can also do local press. Dennis we need to meet with the following to hope they don't sign some letter Juan Vargas ,, Tony Cardenas ,, Pete Agular ,, Xavier Beserra ,, Scott Peters ,, Susan Davis ,, Sam Farr & whoever else we can think of Jim

We should also get Maria Guitierrez involved !!!!!

Jim Costa

On Sep 16, 2015, at 12:37 PM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>"
<DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:

Just left deSaulnier office and Huffman and Co are circulating requests for quotes for Press releases! All hands on deck!

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>><<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: Jason Peltier

Sent: Thursday, September 17, 2015 10:53 AM

To: DCardoza@foley.com

CC: JWalsh@foley.com; Tom Birmingham; Petersen, Scott; jamaral@westlandswater.org; Dan Nelson; David Longly Bernhardt; Denny Rehberg; Lopez, Juan; Solberg, Kristina; Grady, Donald; Costa, Jim

Subject: Re: Heads Up

Contra Costa Water District. Marcus has also represented the Central Utah Project. He was with them when the CVPIA was passed and re authorized the CUP.

> On Sep 17, 2015, at 10:04 AM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

>

> Who is CCWD? If it is who I think it is I may be able to quash it. Dennis

>

>

>

> Congressman Dennis A. Cardoza

> Foley & Lardner LLP

> Suite 600

> 3000 K Street, NW<x-apple-data-detectors://0/0>

> Washington, DC 20007-5109<x-apple-data-detectors://0/0>

> Phone: 202.295-4015

> Fax: 202.672.5399<tel:202.672.5399>

> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

>

>

> Sent from my iPhone

>

> The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

>

>

>

>

> On Sep 17, 2015, at 12:10 PM, Walsh, Jennifer F. <JWalsh@foley.com<<mailto:JWalsh@foley.com>>> wrote:

>

> All-

> I received the email below from a colleague in the House California Democratic delegation. It appears to have been sent to most of the Democratic offices in the delegation. Apologies if you have already seen this.

> Jennifer

>

> From: Marcus G. Faust [<mailto:MarcusFaust@msn.com>]

> Sent: Thursday, September 17, 2015 10:57 AM

> To: Marcus G. Faust

> Subject: CCWD Concerns and Questions with Westlands Settlement Agreement

>

> As you remember during our February 2015 legislative staff briefing, we reviewed the elements of possible impacts from a Westlands drainage settlement on the Delta and CCWD. As is always the case, "the devil is in the details" and we are still reviewing the agreement. Our preliminary analysis confirms the issues/concerns we discussed in February. They are;

> * Impacts to delta water quality (retiring the impacted lands is beneficial but there is still drainage and what will Westlands do with it and how fast will they be required to act?)
> * There is less oversight on Westlands drainage impacts and they have less resources than Reclamation to deal with drainage impacts. Westlands now gets ownership of several CVP facilities including the drain itself. We ask, does this mean they will use it to convey drainage to the Delta? The agreement does not contain any operating directions or limitations on the use of these CVP facilities.
> * Impacts to our CVP water supply allocation (if Westlands gets a better water supply, somebody else's has to get worse - it's a zero sum game). With the retired lands, irrigation amounts go from 1.2MAF to 900TAF, but their allocations continue to be based on 1.2MAF (e.g. 25% of 1.2MAF is 300TAF, 25% of 900TAF is 225TAF). We asked which CVP contractor gets shorted because of this?
> * There is a legal question regarding whether Westlands changing from water service agreements to repayment contracts puts them in a higher priority for water.
> * Impacts to shared CVP finances and cost allocation. If Westlands repayment debt is forgiven, does that mean they drop out of a mutual cost pool so that the rest of us are left with a bigger share of the bureau's fixed operating costs? The agreement says no other contractor cost goes up because of Westlands debt forgiveness but agreement does not specify how this applies to future costs e.g. if Shasta dam gets seismically upgraded in the future.

>
>
> Marcus G. Faust, Attorney at Law
> 332 Constitution Avenue, N.E.
> Washington, D.C. 20002
> MarcusFaust@msn.com<<mailto:MarcusFaust@msn.com>>
> (202) 547-5400

>
> Jennifer F. Walsh
> Director, Public Affairs
>
> Foley & Lardner LLP
> 3000 K Street, N.W. | Suite 600
> Washington, DC 20007-5109
> P 202.295.4762
>
> Visit Foley.com<<http://Foley.com>>

> -----Original Message-----

> From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
> Sent: Wednesday, September 16, 2015 5:47 PM
> To: 'Petersen, Scott'
> Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; Walsh, Jennifer F.; 'Costa, Jim'; Cardoza, Dennis A.
> Subject: RE: Heads Up

> Scott,

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> Could you suggest to other members that before they take a position on the settlement they wait to hear from the administration or that they contact the Deputy Secretary to get his take on the agreement? I believe that Mike is going to be the settlement's best advocate, and it will better for the members to communicate directly with him.

> Thank you,
> Tom

> -----Original Message-----

> From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]
> Sent: Wednesday, September 16, 2015 2:10 PM
> To: Costa, Jim <[REDACTED]@[REDACTED]> <[mailto:\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])>

DCardoza@foley.com<<mailto:DCardoza@foley.com>>

> Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham
<tbingham@westlandswater.org<<mailto:tbingham@westlandswater.org>>>; Dan Nelson
<dan.nelson@sldmwa.org<<mailto:dan.nelson@sldmwa.org>>>; Jason Peltier
<jason.peltier@sldmwa.org<<mailto:jason.peltier@sldmwa.org>>>; David Longly Bernhardt
<dbernhardt@bhfs.com<<mailto:dbernhardt@bhfs.com>>>; Denny Rehberg
<drehberg@mercuryllc.com<<mailto:drehberg@mercuryllc.com>>>; Lopez, Juan
<Juan.Lopez@mail.house.gov<<mailto:Juan.Lopez@mail.house.gov>>>; Solberg, Kristina
<Kristina.Solberg@mail.house.gov<<mailto:Kristina.Solberg@mail.house.gov>>>; Grady, Donald
<Donald.Grady@mail.house.gov<<mailto:Donald.Grady@mail.house.gov>>>; JWalsh@foley.com<<mailto:JWalsh@foley.com>>
> Subject: RE: Heads Up

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>
> _____
> J. Scott Petersen, P.E.
> Deputy Chief of Staff
> Rep. Jim Costa (CA-16)

>
> -----Original Message-----

> From: Costa, Jim
> Sent: Wednesday, September 16, 2015 4:38 PM
> To: DCardoza@foley.com<<mailto:DCardoza@foley.com>>
> Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham; Dan Nelson; Jason Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott; Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com<<mailto:JWalsh@foley.com>>
> Subject: Re: Heads Up

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> Yes I agree ,, ignore the last list and we will try to get a copy of the letter. The Fact vs Fiction is a good idea ,, what about bringing Maria G. Involing Hispanics

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> Sent from my iPhone

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> On Sep 16, 2015, at 4:27 PM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>"
<DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:

>
> Thanks Jim,

>
> Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallow staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff , Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?

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> Jennifer and I also recommend that if you can get a copy of the letter that Huffman is circulating, that you put out a "fiction" "Fact" comparison to debunk his arguments.

>
> Thanks for all the great work Jim and Scott!

>
> Regards,

>
> Dennis

> -----Original Message-----

> From: Costa, Jim [[mailto: \[REDACTED\]@ \[REDACTED\]](mailto: [REDACTED]@ [REDACTED])]
> Sent: Wednesday, September 16, 2015 2:38 PM

> To: Cardoza, Dennis A.
> Cc: jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>; Tom Birmingham; Dan Nelson; Jason
> Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott;
> Lopez, Juan; Solberg, Kristina; Grady, Donald
> Subject: Re: Heads Up
>
> We are just about finished with our Op-Ed piece ,, we can also do
> local press. Dennis we need to meet with the following to hope they
> don't sign some letter Juan Vargas ,, Tony Cardenas ,, Pete Aguilar ,,
> Xavier Beserra ,, Scott Peters ,, Susan Davis ,, Sam Farr & whoever
> else we can think of Jim
>
> We should also get Maria Guitarrez involved !!!!!
>
> Jim Costa
>
> On Sep 16, 2015, at 12:37 PM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>"
<DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:
>
> Just left deSaulnier office and Huffman and Co are circulating requests for quotes for Press releases! All hands on deck!
>
>
>
> Congressman Dennis A. Cardoza
> Foley & Lardner LLP
> Suite 600
> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
> 20007-5109<x-apple-data-detectors://0/0>
> Phone: 202.295-4015
> Fax: 202.672.5399<tel:202.672.5399>
> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>><<mailto:dcardoza@foley.com>>
>
>
> Sent from my iPhone
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From: Tom Birmingham

Sent: Thursday, September 17, 2015 12:43 PM

To: 'Costa, Jim'; JWalsh@foley.com

CC: 'Petersen, Scott'; jamaral@westlandswater.org; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; DCardoza@foley.com

Subject: RE: Heads Up

I am currently drafting a reply to Marcus' email. I will share my draft with this group as soon as I am done.

-----Original Message-----

From: Costa, Jim [[mailto: \[REDACTED\]@ \[REDACTED\]](mailto: [REDACTED]@ [REDACTED])]

Sent: Thursday, September 17, 2015 11:27 AM

To: JWalsh@foley.com

Cc: Tom Birmingham <tobirmingham@westlandswater.org>; Petersen, Scott <Scott.Petersen@mail.house.gov>; jamaral@westlandswater.org; Dan Nelson <dan.nelson@sldmwa.org>; Jason Peltier <jason.peltier@sldmwa.org>; David Longly Bernhardt <dbernhardt@bhfs.com>; Denny Rehberg <drehberg@mercuryllc.com>; Lopez, Juan <Juan.Lopez@mail.house.gov>; Solberg, Kristina <Kristina.Solberg@mail.house.gov>; Grady, Donald <Donald.Grady@mail.house.gov>; DCardoza@foley.com
Subject: Re: Heads Up

Maybe we should put together a counter point letter ??? Jim

Sent from my iPhone

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> To: Marcus G. Faust

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> Agreement

>

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>

> Marcus G. Faust, Attorney at Law

> 332 Constitution Avenue, N.E.
> Washington, D.C. 20002
> MarcusFaust@msn.com
> (202) 547-5400

>
> Jennifer F. Walsh
> Director, Public Affairs

>
> Foley & Lardner LLP
> 3000 K Street, N.W. | Suite 600
> Washington, DC 20007-5109
> P 202.295.4762

>
> Visit Foley.com

> -----Original Message-----

> From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]

> Sent: Wednesday, September 16, 2015 5:47 PM

> To: 'Petersen, Scott'

> Cc: jamaral@westlandswater.org; 'Dan Nelson'; 'Jason Peltier'; 'David Longly Bernhardt'; 'Denny Rehberg'; 'Lopez, Juan'; 'Solberg, Kristina'; 'Grady, Donald'; Walsh, Jennifer F.; 'Costa, Jim'; Cardoza, Dennis A.

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> To: Costa, Jim <[REDACTED]@[REDACTED] [REDACTED] [REDACTED] DCardoza@foley.com

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> <tbirmingham@westlandswater.org>; Dan Nelson <dan.nelson@sldmwa.org>;

> Jason Peltier <jason.peltier@sldmwa.org>; David Longly Bernhardt

> <dbernhardt@bhfs.com>; Denny Rehberg <drehberg@mercuryllc.com>; Lopez,

> Juan <Juan.Lopez@mail.house.gov>; Solberg, Kristina

> <Kristina.Solberg@mail.house.gov>; Grady, Donald

> <Donald.Grady@mail.house.gov>; JWalsh@foley.com

> Subject: RE: Heads Up

>
> To clarify, there is no letter circulating. The Nor Cal Dems are generating and coordinating press statements in opposition to the deal, but from what I've heard from staff the majority of the Democratic delegation isn't going to stick its head out on this issue without knowing much about it and is in a "wait and see" mode.

>
> I'm planning to circulate the attached CRS background on the issue and Commissioner Lopez's statement to the Resources staffers in the California delegation.

>
>
> J. Scott Petersen, P.E.

> Deputy Chief of Staff

> Rep. Jim Costa (CA-16)
>
>
> -----Original Message-----
> From: Costa, Jim
> Sent: Wednesday, September 16, 2015 4:38 PM
> To: DCardoza@foley.com
> Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason
> Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott;
> Lopez, Juan; Solberg, Kristina; Grady, Donald; JWalsh@foley.com
> Subject: Re: Heads Up
>
> Yes I agree ,, ignore the last list and we will try to get a copy of
> the letter. The Fact vs Fiction is a good idea ,, what about bringing
> Maria G. Involving Hispanics
>
> Sent from my iPhone
>
>> On Sep 16, 2015, at 4:27 PM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:
>>
>> Thanks Jim,
>>
>> Hi Jim Jennifer and I have met with the staff of everyone on your list but Susan Davis. We also had good meetings with Karen Bass, Swallwell staff, Berra Staff, DeSaulnier staff and Mark personally, Lofgren staff, Brownley staff, Both Sanchez Sisters staff, Honda staff, Aguilar staff, Peters staff, Vargas staff, Ruiz staff, Lieu staff and Takano staff. Still need to see Davis, Allard, Lee, Schiff, Torrez, and Waters. Plan to do those tomorrow but if you can see them on the Floor during votes the last six would be priorities. Are not talking to Speier, Matsui, Thomson, Eshoo, Pelosi, Sherman, Lowenthal, Garamendi, Huffman, McNerney unless you think any of them are even slightly gettable?
>>
>> Jennifer and I also recommend that if you can get a copy of the letter that Huffman is circulating, that you put out a "fiction" "Fact" comparison to debunk his arguments.
>>
>> Thanks for all the great work Jim and Scott!
>>
>> Regards,
>>
>> Dennis
>> -----Original Message-----
>> From: Costa, Jim [[mailto: \[REDACTED\]@ \[REDACTED\] \[REDACTED\]](mailto: [REDACTED]@ [REDACTED] [REDACTED])]
>> Sent: Wednesday, September 16, 2015 2:38 PM
>> To: Cardoza, Dennis A.
>> Cc: jamaral@westlandswater.org; Tom Birmingham; Dan Nelson; Jason
>> Peltier; David Longly Bernhardt; Denny Rehberg; Petersen, Scott;
>> Lopez, Juan; Solberg, Kristina; Grady, Donald
>> Subject: Re: Heads Up
>>
>> We are just about finished with our Op-Ed piece ,, we can also do
>> local press. Dennis we need to meet with the following to hope they
>> don't sign some letter Juan Vargas ,, Tony Cardenas ,, Pete Aguilar ,,
>> Xavier Beserra ,, Scott Peters ,, Susan Davis ,, Sam Farr & whoever
>> else we can think of Jim
>>
>> We should also get Maria Guitarrez involved !!!!!
>>
>> Jim Costa
>>
>>> On Sep 16, 2015, at 12:37 PM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:
>>>
>>> Just left deSaulnier office and Huffman and Co are circulating requests for quotes for Press releases! All hands on deck!
>>>
>>>
>>>

>>> Congressman Dennis A. Cardoza
>>> Foley & Lardner LLP
>>> Suite 600
>>> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
>>> 20007-5109<x-apple-data-detectors://0/0>
>>> Phone: 202.295-4015
>>> Fax: 202.672.5399<tel:202.672.5399>
>>> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

>>>
>>>
>>> Sent from my iPhone
>>>

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>>>
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>>>
>>>
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From: Johnny Amaral

Sent: Monday, September 21, 2015 10:17 AM

To: David Bernhardt; Dennis Cardoza; Catherine Karen; Denny Rehberg

Subject: Editorial: Westlands settlement deal is a smart compromise | Fresno Bee

<http://www.fresnobee.com/opinion/editorials/article35716464.html>

Best,

Johnny Amaral

From: Dennis Nuxoll
Sent: Tuesday, September 22, 2015 12:05 PM
To: 'Joe Raeder'; 'Bernhardt, David L.'; 'Johnny Amaral'
Subject: reminder water group call

Call:+1 (877) 273-4202, Conference Room Number: 7229934

Dennis Nuxoll
Vice President, Federal Government Affairs
Western Growers
1776 Eye Street NW, Suite 255
Washington, DC 20006
Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·
Email: dnuxoll@wga.com
Website: www.wga.com

From: Cannon Michael
Sent: Thursday, September 24, 2015 1:33 PM
To: Johnny Amaral
CC: David Bernhardt
Subject: Re: FW: UPDATED GROWER LETTER INITIAL DRAFT

On the first bullet I thought the idea was to add more detail on operations.

Didn't we want to ask for making the changes permanent? (2nd bullet).

What are your thoughts on an added photo page of impacts?

Sincerely,

Cannon Michael
Bowles Farming Company
209-752-7792 (Direct)

Please consider the Environment before printing this email.

=====

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=====

On Thu, Sep 24, 2015 at 8:08 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:

Cannon,

David and I discussed the letter and both thought it would make sense to add the opening paragraph, and edit the second. Revised DRAFT is attached.

Please review and advise

Johnny

From: Johnny Amaral

Sent: Monday, September 28, 2015 7:01 AM

To: Denny Rehberg; Dennis Cardoza; David Bernhardt; Catherine Karen

Subject: No call today

Sorry for the short notice.

Best,

Johnny Amaral

From: Rojewski, Cole
Sent: Wednesday, September 30, 2015 10:23 AM
To: jamaral@westlandswater.org; Bernhardt, David L. (DBernhardt@BHFS.com)
Subject: RE: Senate Water Hearing

Can you guys send me Sarah's info below please?

From: Kearney, Christopher (Energy) [mailto:Christopher_Kearney@energy.senate.gov]
Sent: Wednesday, September 30, 2015 1:15 PM
To: Rojewski, Cole
Subject: RE: Senate Water Hearing

Do you have additional contact info – title, company, stree address etc? watiting to hear back from her.

From: Gayle Holman
Sent: Wednesday, September 30, 2015 1:04 PM
To: Karen Clark
Subject: Mailing Address for David Bernhardt

Do you have a physical mailing address for Dave Bernhardt? I need to send him a few items to his DC address.

Thank you,

Gayle

Gayle Holman
Public Affairs Representative
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

From: Karen Clark
Sent: Wednesday, September 30, 2015 1:07 PM
To: 'Gayle Holman'
Subject: RE: Mailing Address for David Bernhardt

Brownstein Hyatt Farber Schreck
1350 I Street, NW
Washington, DC 20005

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Gayle Holman [mailto:gholman@westlandswater.org]
Sent: Wednesday, September 30, 2015 1:04 PM
To: Karen Clark
Subject: Mailing Address for David Bernhardt

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Gayle

Gayle Holman
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Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED] - [REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

From: Gayle Holman
Sent: Wednesday, September 30, 2015 1:07 PM
To: 'Karen Clark'
Subject: RE: Mailing Address for David Bernhardt

Thank you! I'll add to my contacts list. ☺

Gayle Holman
Public Affairs Representative
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

From: Karen Clark [<mailto:kclark@westlandswater.org>]
Sent: Wednesday, September 30, 2015 1:07 PM
To: 'Gayle Holman'
Subject: RE: Mailing Address for David Bernhardt

Brownstein Hyatt Farber Schreck
1350 I Street, NW
Washington, DC 20005

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Gayle Holman [<mailto:gholman@westlandswater.org>]
Sent: Wednesday, September 30, 2015 1:04 PM
To: Karen Clark
Subject: Mailing Address for David Bernhardt

Do you have a physical mailing address for Dave Bernhardt? I need to send him a few items to his DC address.

Thank you,

Gayle

Gayle Holman
Public Affairs Representative
Westlands Water District
3130 N. Fresno Street

P.O. Box 6056
Fresno, CA 93703-6056
(559) 241-6233 (direct)
(559) [REDACTED]-[REDACTED] (cell)
(559) 241-6277 (fax)
gholman@westlandswater.org

From: Tom Birmingham

Sent: Thursday, October 1, 2015 3:06 PM

To: 'Johnny Amaral'; DCardoza@foley.com; 'David Longly Bernhardt'; 'Catherine Karen'; 'Denny Rehberg'

Subject: Please Accept My Apologies

I apologize for the inconvenience caused by my tardiness this morning. For some inexplicable reason, I had it in my mind that the call started at 8:30 a.m. PDT. Again, I am sorry for any inconvenience.

Tom

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]

Sent: Thursday, October 1, 2015 8:11 AM

To: DCardoza@foley.com

Cc: Tom Birmingham <tbingham@westlandswater.org>; David Longly Bernhardt <dbernhardt@bhfs.com>; Catherine Karen <ckaren@sidley.com>; Denny Rehberg <drehberg@mercuryllc.com>

Subject: Re: Anyone else on the call. I've got news

I am. So is catherine. I'm trying to reach tom

Best,

Johnny Amaral

> On Oct 1, 2015, at 8:10 AM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

>

>

>

>

>

> Congressman Dennis A. Cardoza

> Foley & Lardner LLP

> Suite 600

> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC

> 20007-5109<x-apple-data-detectors://0/0>

> Phone: 202.295-4015

> Fax: 202.672.5399<tel:202.672.5399>

> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

>

>

> Sent from my iPhone

>

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From: Johnny Amaral

Sent: Thursday, October 1, 2015 3:23 PM

To: Dennis Cardoza; Tom Birmingham; Denny Rehberg; Catherine Karen; David Bernhardt; Ed Manning; Carolyn Jensen; Mike Burns; Karen Clark; <Empty>; Gayle Holman; <Empty>

Subject: Friday morning PR and legislative call

Team,

Tomorrow's call is cancelled. I'm sorry for the short notice and thank you for understanding.

Call my cell if you have any questions.

Best,

Johnny Amaral

From: DCardoza@foley.com
Sent: Thursday, October 1, 2015 6:46 PM
To: Tom Birmingham
Subject: Re: Please Accept My Apologies

Really no problem. I have done it many times. Dennis

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On Oct 1, 2015, at 3:06 PM, Tom Birmingham <tbirmingham@westlandswater.org<<mailto:tbirmingham@westlandswater.org>>> wrote:

I apologize for the inconvenience caused by my tardiness this morning. For some inexplicable reason, I had it in my mind that the call started at 8:30 a.m. PDT. Again, I am sorry for any inconvenience.

Tom

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Thursday, October 1, 2015 8:11 AM
To: DCardoza@foley.com<<mailto:DCardoza@foley.com>>
Cc: Tom Birmingham <tbirmingham@westlandswater.org<<mailto:tbirmingham@westlandswater.org>>>; David Longly Bernhardt <dbernhardt@bhfs.com<<mailto:dbernhardt@bhfs.com>>>; Catherine Karen <ckaren@sidley.com<<mailto:ckaren@sidley.com>>>; Denny Rehberg <drehberg@mercuryllc.com<<mailto:drehberg@mercuryllc.com>>>
Subject: Re: Anyone else on the call. I've got news

I am. So is catherine. I'm trying to reach tom

Best,

Johnny Amaral

On Oct 1, 2015, at 8:10 AM, "DCardoza@foley.com<<mailto:DCardoza@foley.com>>"
<DCardoza@foley.com<<mailto:DCardoza@foley.com>>> wrote:

Congressman Dennis A. Cardoza
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC
20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>><<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: Bernhardt, David L.

Sent: Monday, October 5, 2015 4:58 AM

To: Johnny Amaral (jamaral@westlandswater.org); Thomas W. Birmingham (tbirmingham@westlandswater.org); 'Denny Rehberg' (DRehberg@mercuryllc.com); Dennis Cardoza (dcardoza@foley.com)

Subject: FW: Panel to debate long-awaited drought measures

FYI

Panel to debate long-awaited drought measures

[Annie Snider](#), E&E reporter

Published: Monday, October 5, 2015

After months of quiet backroom discussions, efforts to pass Western drought legislation are getting ready for prime time. Sen. Lisa Murkowski's (R-Alaska) Energy and Natural Resources Committee this week will hold a long-awaited legislative hearing on the two lead California-specific relief measures, as well as several other bills dealing with Western water issues.

For lawmakers eager to put legislative fixes in place before the winter rainy season begins, the clock is ticking.

Sen. Dianne Feinstein (D-Calif.), the lead negotiator on California water issues in the upper chamber, has spent nearly two years trying to thread the needle to get more water to parched Central Valley farms and Southern California communities, while not fundamentally altering Endangered Species Act protections -- a no-go for many Democrats.

The House-passed bill, [H.R. 2898](#) from Rep. David Valadao (R-Calif.), goes too far for Feinstein, although she has said it provides a viable starting point.

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She introduced her counterproposal, [S. 1894](#), in late July with Sen. Barbara Boxer (D-Calif.). It would make a separate set of operational tweaks along the Sacramento-San Joaquin River Delta system, while also pushing funding to hard-hit communities and boosting desalination efforts ([E&ENews PM](#), July 29).

The conventional wisdom has been that any drought legislation for the Golden State will need at least Feinstein's support in order to have a shot at moving through the upper chamber. But several important political dynamics remain in flux.

For one thing, after last year's bid to pass a California bill failed, Murkowski opted to broaden the effort West-wide this year.

"What I've been trying to do is encourage a coalition of interests, and as you do that, you build support for a broader bill," Murkowski said in an interview last week. "So in an effort to help address California's more immediate situation, we also look to the longer term in terms of what goes on with Western water."

A number of items have surfaced in recent months that could give a growing portion of the West a stake in the package.

One likely candidate to make it in: ranking member Maria Cantwell's (D-Wash.) legislation ([S. 1694](#)) authorizing a water-sharing agreement in Washington state's agriculture-heavy and drought-hit Yakima River Basin ([E&E Daily](#), July 8).

Time-sensitive water sharing agreements in Oregon's Klamath River Basin that are also in need of congressional authorization could potentially enter the mix, too.

Meanwhile, members of the Arizona delegation, always looking over their shoulders nervously at water-hungry and politically powerful California, have been working on ideas they could seek to add.

Many of their potential amendments pertain to voluntary conservation efforts among the Colorado River Basin's main users, aimed at keeping levels at Lake Mead from dipping below the threshold that triggers restrictions, said Ted Cooke, interim leader of the Central Arizona Project, which moves the state's share of Colorado River water.

"Money, as always, is a big contribution that the government can make," Cooke said.

But, because Sen. Jeff Flake (R-Ariz.), a staunch fiscal conservative, is leading Arizona's efforts on the legislation, he said a range of possible approaches are being considered.

The Nevada delegation, too, has been rallying ideas.

New Mexico Sen. Tom Udall (D) also wants a piece of the action. His state-specific drought measure, [S. 1936](#), is on the agenda for Thursday's hearing.

So, too, are two hydropower bills from Murkowski ([S. 1583](#) and [S. 2046](#)) and one from Sen. Richard Burr (R-N.C.) ([S. 2083](#)).

Members of the Western Governors' Association were on Capitol Hill last week, broadly pressing for further state authority on resource issues.

Asked at a press event what he'd like to see changed in a West-wide drought measure, Gov. Matt Mead (R) of Wyoming said new reservoir projects are too expensive and the permitting process is too time-consuming.

"One thing they certainly could try and do is figure out a process where states, working in coordination with federal partners, could do this [permitting] in a more timely fashion, so that ... it doesn't look like mission impossible," he said.

"These things can be done."

McCarthy alters calculus

But the political backdrop for these ongoing conversations changed significantly when House Speaker John Boehner (R-Ohio) abruptly announced his retirement and House Majority Leader Kevin McCarthy (R-Calif.) became the front-runner to take over the job.

McCarthy's Central Valley district has been hard hit by the entrenched drought, and he has been a key player in the lower chamber's drought relief efforts.

Whether a promotion to speaker would help or hurt his ability to get legislation through now is a point of heated debate behind the scenes.

On one hand, as speaker, he would be in an even more powerful position to choose conference committee members and to bring a final bill to the floor, said Patricia Schifferle, an adviser to California conservation and community groups.

"That's where his power will shine through," she said.

But McCarthy would still have to contend with his party's fiscal conservatives. The House measure alone rang up at more than \$700 million, according to the Congressional Budget Office, and could grow significantly.

A bid to move a pricey bill that would benefit his home district could raise ire among the party's tea party wing.

Some argue that a change of job for McCarthy wouldn't end up being the deciding factor for legislation this year.

"He's used a lot of his clout to get a bad bill done, and we stopped it, and I figure if it's still bad, we'll stop it, regardless of whether he's leader or speaker," Boxer said.

Schedule: The hearing is Thursday, Oct. 8, at 9:30 a.m. in 366 Dirksen.

Reporters Geof Koss and Debra Kahn contributed.

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From: Johnny Amaral

Sent: Monday, October 5, 2015 6:58 AM

To: Dennis Cardoza; Denny Rehberg; David Bernhardt; Catherine Karen

Subject: No call today

Sorry. Too much on my plate to fit it in. Headed to Los Banos

See you soon

Best,

Johnny Amaral

From: Sarah Woolf

Sent: Monday, October 5, 2015 7:17 AM

To: Johnny Amaral; David Bernhardt

Subject: testimony

Attachments: Testimony of Sarah Woolf - draft with JA edits.docx; Untitled attachment 06844.htm

I think the testimony you both put together is great. I have made only a few changes. The one paragraph I am struggling with and have not come up with the right fix yet is the last one on page 2. The paragraph about how the agencies have continually made decisions on behalf of the biological opinions to the extreme. Somehow if we could mention that no species or habitat have improved by their actions and communities or people have taken the brunt of their actions. also I put something in there about Shasta today vs. shasta in 1977. Not sure it is necessary but i thought it might be a segway to discuss the disconnect. Lets talk this AM if possible. Thank you for doing so much on this is really is great.

Testimony of Sarah Woolf, Fresno County Farmer
Before the Committee on Energy and Natural Resources
United States Senate

Legislative Hearing on
Western and Alaska Water Legislation
October 8, 2015

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I am a second generation farmer. My two brothers and I grow tomatoes, garlic, and onions in Fresno County. My husband, who is here with me today, is also a second-generation farmer. While our farms rely on some seasonal employees, many of our employees are long-term employees who have been with us for years.

I know that in June, you received testimony from another California farmer, Cannon Michael, who explained the impacts of the water crisis facing California agriculture. At that time he discussed many of the key facts associated with the water challenges facing California farmers, and he explained that:

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- Almost 75% of the state's irrigated farm land, nearly seven million acres, will receive 20% or less of its normal surface water supply; and
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These are very significant facts for you to consider. However, I also want to bring to your attention the impacts felt by individuals who live and work in the cities and communities without water, people without jobs and business owners recognizing they potentially have no future. The fear and despair in people's eyes today is real, and it is heart wrenching. I know this because I spend a lot of time working in these communities.

These people are Californians, and they are working hard to produce the basic necessities for our country and our world, and of course, for themselves. They work the land while trying to improve our schools and communities. Many of them have come to our country recently, and others from many generations before, but all with the hope of improving the lives of their

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What makes our water situation so disturbing is that many of these negative effects have been imposed on our community, not by Mother Nature, but as the direct result of conscious policy decisions made by federal agency employees who believe they are following the will and direction of Congress~~your will and your direction~~. The people of the State of California which includes my family have very strong ~~ly ingrained~~ environmental values - and I deeply understand the importance of protecting the environment - but environmental concerns cannot be put above all else, without any regard to the negative impacts that are caused by the policy choices made.

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(San Luis & Delta-Mendota Water Auth. v. Jewell, 747 F.3d 581, 593 (9th Cir. 2014)).

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DRAFT

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Sarah Woolf

Water Wise

██████████@██████████ ██████████
559-██████████ ██████████

From: Bernhardt, David L.
Sent: Monday, October 5, 2015 7:30 AM
To: Sarah Woolf
CC: Johnny Amaral
Subject: Re: testimony

Sarah: Have you received an invite letter? I want to make sure we have the right number of copies and any disclosure statement they have requested.

David Bernhardt

On Oct 5, 2015, at 10:16 AM, Sarah Woolf <[REDACTED]@[REDACTED]> wrote:

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[REDACTED]@[REDACTED]
559-[REDACTED]-[REDACTED]

<Testimony of Sarah Woolf - draft with JA edits.docx>

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From: Bernhardt, David L.
Sent: Monday, October 5, 2015 8:00 AM
To: 'Sarah Woolf'; Johnny Amaral
Subject: RE: testimony
Attachments: Testimony of Sarah Woolf - draft with JA edits_(13465420_1).DOCX

Sarah: Based on your comments below, I added an additional sentence to the paragraph you described below, which is intended to address the points you made. See if that sentence captures the point you want to make.

From: Sarah Woolf [mailto:██████████@██████████]
Sent: Monday, October 05, 2015 10:17 AM
To: Johnny Amaral; Bernhardt, David L.
Subject: testimony

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United States Senate
Legislative Hearing on
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To: Bernhardt, David L.
CC: Johnny Amaral
Subject: Re: testimony

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Water Wise

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Sent: Monday, October 5, 2015 9:18 AM
To: Bernhardt, David L.
CC: Johnny Amaral
Subject: Re: testimony
Attachments: Testimony of Sarah Woolf - draft with JA edits.docx; Untitled attachment 09079.htm

David,
Thank you for the changes. They all look good to me. Also, please let me know what you details you need from Chris and I will shoot you an email after I talk to him.

Thank you,

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Water Wise

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DRAFT

From: Johnny Amaral
Sent: Monday, October 5, 2015 10:08 AM
To: David Bernhardt
Subject: Sen Gardner staff meeting

Can you send me the particulars for the meeting?

Name of the staffer
Location?
Time?

From: Bernhardt, David L.
Sent: Monday, October 5, 2015 10:12 AM
To: 'Johnny Amaral'
Subject: RE: Sen Gardner staff meeting

Philip Newman

Direct Phone 2281362
354 Russell Senate Office Building
Washington, D.C. 20510
Office Phone: (202) 224-5941

From: Johnny Amaral [mailto:jamaral@westlandswater.org]
Sent: Monday, October 05, 2015 1:08 PM
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Sent: Monday, October 5, 2015 10:13 AM
To: 'Bernhardt, David L.'
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From: Bernhardt, David L.
Sent: Monday, October 5, 2015 10:18 AM
To: 'Johnny Amaral'
Subject: RE: Sen Gardner staff meeting

2 pm Thursday

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Monday, October 05, 2015 1:13 PM
To: Bernhardt, David L.
Subject: RE: Sen Gardner staff meeting

Thanks. And what time is the meeting?

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Monday, October 5, 2015 10:12 AM
To: 'Johnny Amaral' <jamaral@westlandswater.org>
Subject: RE: Sen Gardner staff meeting

Philip Newman

Direct Phone 2281362
354 Russell Senate Office Building
Washington, D.C. 20510
Office Phone: (202) 224-5941

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Monday, October 05, 2015 1:08 PM
To: Bernhardt, David L.
Subject: Sen Gardner staff meeting

Can you send me the particulars for the meeting?

Name of the staffer
Location?
Time?

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From: Johnny Amaral
Sent: Monday, October 5, 2015 10:19 AM
To: 'Bernhardt, David L.'
Subject: RE: Sen Gardner staff meeting

Thank you

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Monday, October 5, 2015 10:18 AM
To: 'Johnny Amaral' <jamaryl@westlandswater.org>
Subject: RE: Sen Gardner staff meeting

2 pm Thursday

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Office Phone: (202) 224-5941

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Sent: Monday, October 05, 2015 1:08 PM
To: Bernhardt, David L.
Subject: Sen Gardner staff meeting

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From: Johnny Amaral
Sent: Monday, October 5, 2015 10:37 AM
To: 'Bernhardt, David L.'
Subject: RE: Sen Gardner staff meeting

And what is the committee room number for the hearing?

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Monday, October 5, 2015 10:18 AM
To: 'Johnny Amaral' <jamaryl@westlandswater.org>
Subject: RE: Sen Gardner staff meeting

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To: Bernhardt, David L.
Subject: Sen Gardner staff meeting

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From: Bernhardt, David L.
Sent: Monday, October 5, 2015 10:42 AM
To: 'Johnny Amaral'
Subject: RE: Sen Gardner staff meeting

SD 366
Dirksen 366.

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Monday, October 05, 2015 1:37 PM
To: Bernhardt, David L.
Subject: RE: Sen Gardner staff meeting

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Office Phone: (202) 224-5941

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From: Sarah Woolf

Sent: Monday, October 5, 2015 2:24 PM

To: David Bernhardt; Johnny Amaral

Subject: Fwd: Invitation to Testify before the Senate Committee on Energy and Natural Resources on October 8, 2015 at 9:30am

Attachments: Woolf Invitation Letter 10-8-15 ENR Cmte am Hrg.pdf; Untitled attachment 09052.htm

I just received this letter via email.

Do you want me to format the testimony and email it today or David do you want to do it all tomorrow? Just let me know how you would like to proceed.

Thank you,

Sarah Woolf

Water Wise

██████████@██████████
559.██████████

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>

Subject: Invitation to Testify before the Senate Committee on Energy and Natural Resources on October 8, 2015 at 9:30am

Date: October 5, 2015 at 2:21:04 PM PDT

To: "██████████@██████████" <██████████@██████████>

Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>

Good afternoon, Ms. Woolf. Attached please find an invitation for you to testify before the U.S. Senate Committee on Energy and Natural Resources on Thursday, October 8, 2015 at 9:30 a.m.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Darla Ripchensky, PMP

Chief Clerk

U.S. Senate Committee on Energy and Natural Resources

304 Dirksen Senate Office Building

Washington, DC 20510

202.224.3607

LISA MURKOWSKI, Alaska, Chairman

JOHN BARRASSO, Wyoming
JAMES E. RISCH, Idaho
MIKE LEE, Utah
JEFF FLAKE, Arizona
STEVE DAINES, Montana
BILL CASSIDY, Louisiana
CORY GARDNER, Colorado
ROB PORTMAN, Ohio
JOHN HOEVEN, North Dakota
LAMAR ALEXANDER, Tennessee
SHELLEY MOORE CAPITO, West Virginia

MARIA CANTWELL, Washington
RON WYDEN, Oregon
BERNARD SANDERS, Vermont
DEBBIE STABENOW, Michigan
AL FRANKEN, Minnesota
JOE MANCHIN III, West Virginia
MARTIN HEINRICH, New Mexico
MAZIE HIRONO, Hawaii
ANGUS S. KING, Jr., Maine
ELIZABETH WARREN, Massachusetts

KAREN K. BILLUPS, STAFF DIRECTOR
PATRICK J. MCCORMICK III, CHIEF COUNSEL
ANGELA BECKER-DIPPMANN, DEMOCRATIC STAFF DIRECTOR
SAM E. FOWLER, DEMOCRATIC CHIEF COUNSEL

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

WWW.ENERGY.SENATE.GOV

October 5, 2015

Ms. Sarah Woolf
President, Water Wise
Partner, Clark Brothers Farming
2525 Alluvial Avenue, Suite 261
Clovis, CA 93611

Dear Ms. Woolf:

The Senate Committee on Energy and Natural Resources invites you to testify at a hearing on **Thursday, October 8, 2015 at 9:30 a.m. in Room 366 of the Dirksen Senate Office Building** in Washington, DC. The purpose of this hearing is to receive testimony from you on the following bills:

- **H.R. 2898**, the Western Water and American Food Security Act of 2015
- **S. 1894**, the California Emergency Drought Relief Act of 2015

In order to maximize the time available for Members of the Committee to ask questions, please limit the oral summation of your written testimony to five minutes. You are welcome to submit a more extensive written statement for inclusion in the official record.

To facilitate preparation by Members for this hearing, please deliver 25 copies of your written testimony formatted on letter-sized paper **by 9:30 a.m. on Tuesday, October 6, 2015**, to the attention of Darla Ripchensky, Chief Clerk, Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510. In addition to the 25 copies for distribution at the hearing, you are required to provide the Chief Clerk with an electronic copy of your testimony which can be emailed to Darla_Ripchensky@energy.senate.gov. Please prepare your testimony in the following format: single-spaced with name, title, and organization printed in the top margin of the first full page of text in an MS Word document. Due to heightened security measures, all envelopes and packages are screened and tested for contaminants prior to delivery to Senate offices. This process significantly affects the timelines of deliveries, so we ask that you please plan accordingly.

Ms. Sarah Woolf
Page 2
October 5, 2015

Thank you in advance for your participation in this hearing. Should you or your staff have any questions about the substantive or procedural aspects of this hearing, please do not hesitate to contact Chris Kearney with Chairman Murkowski's office or Melanie Stansbury with Ranking Member Cantwell's office at (202) 224-4971.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Murkowski", with a stylized, flowing script.

Lisa Murkowski
Chairman

From: Bernhardt, David L.

Sent: Monday, October 5, 2015 2:40 PM

To: 'Sarah Woolf'

CC: Johnny Amaral (jamaral@westlandswater.org)

Subject: RE: Invitation to Testify before the Senate Committee on Energy and Natural Resources on October 8, 2015 at 9:30am

Attachments: TestimonyofSaraWoolfSENR_(13471084_1).DOCX

Sarah: We will reformat your testimony. I believe the Committee wants to disclose that you are a Westlands Board member even though you are testifying to share your personal perspective. I have added a sentence to the second paragraph to address that issue. If you are ok with that we will reformat and prepare everything for delivery.

Best,

David Your message contains the following attachments:

From: Sarah Woolf [mailto:██████████@██████████]

Sent: Monday, October 05, 2015 5:24 PM

To: Bernhardt, David L.; Johnny Amaral

Subject: Fwd: Invitation to Testify before the Senate Committee on Energy and Natural Resources on October 8, 2015 at 9:30am

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Thank you,

Sarah Woolf

Water Wise

██████████@██████████
559 ██████████

Begin forwarded message:

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Date: October 5, 2015 at 2:21:04 PM PDT

To: "██████████@██████████" <██████████@██████████>

Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>

Good afternoon, Ms. Woolf. Attached please find an invitation for you to testify before the U.S. Senate Committee on Energy and Natural Resources on Thursday, October 8, 2015 at 9:30 a.m.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Darla Ripchensky, PMP
Chief Clerk
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510
202.224.3607

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Testimony of Sarah Woolf, Fresno County Farmer

Before the Committee on Energy and Natural Resources United States Senate

Legislative Hearing on Western and Alaska Water Legislation October 8, 2015

Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and members of the Committee. I was honored to be invited to testify before the Committee today, and I am hopeful that my remarks can facilitate progress on the critical legislation you have before you today because entire communities are depending upon you to find a resolution.

I am a second generation farmer. My two brothers and I grow tomatoes, garlic, and onions in Fresno County. My husband, who is here with me today, is also a second-generation farmer. While our farms rely on some seasonal employees, many of our employees are long-term employees who have been with us for years. I am testifying today to share my personal perspective, although I am also an elected Member of the Board of Directors of Westlands Water District.

I know that in June, you received testimony from another California farmer, Cannon Michael, who explained the impacts of the water crisis facing California agriculture. At that time he discussed many of the key facts associated with the water challenges facing California farmers, and he explained that:

- 44% of California's 9.6 million acres of irrigated farmland are receiving zero surface water allocations from state, federal, and local irrigation projects, according to the California Farm Water Coalition Agricultural Water Supplies Survey;
- Almost 75% of the state's irrigated farm land, nearly seven million acres, will receive 20% or less of its normal surface water supply; and
- According to the California Department of Water Resources (DWR), 692,000 acres of farmland were fallowed in 2014 because of water shortages.

These are very significant facts for you to consider. However, I also want to bring to your attention the impacts felt by individuals who live and work in the cities and communities without water, people without jobs and business owners recognizing they potentially have no future. The fear and despair in people's eyes today is real, and it is heart wrenching. I know this because I spend a lot of time working in these communities.

These people are Californians, and they are working hard to produce the basic necessities for our country and our world, and of course, for themselves. They work the land while trying to

improve our schools and communities. Many of them have come to our country recently, and others from many generations before, but all with the hope of improving the lives of their families. They want the opportunities that all Americans want, an education and an opportunity for a better life.

If our elected representatives are responsible for anything, it should be to provide the most basic of needs: water, access to schools, and most importantly the ability to work. Without these basic needs, residents of our communities are forced to live in tents made of pallets behind mini marts and stand in food lines on a weekly basis to fulfill those basic needs. We cannot be the land of opportunity while communities lack water and residents are actually showering in church parking lots.

What makes our water situation so disturbing is that many of these negative effects have been imposed on our community, not by Mother Nature, but as the direct result of conscious policy decisions made by federal agency employees who believe they are following the will and direction of Congress. The people of the State of California which includes my family have very strong environmental values - and I deeply understand the importance of protecting the environment - but environmental concerns cannot be put above all else, without any regard to the negative impacts that are caused by the policy choices made.

When confronted about these consequences, the administrators of federal agencies claim they are merely exercising their discretion under the law in a way that causes these impacts. The Courts have agreed that they are free to cause these ill wills with your blessing. The Courts have explained:

We recognize the enormous practical implications of this decision. But the consequences were prescribed when Congress determined that “these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” . . . Consequently, any other “[r]esolution of these fundamental policy questions” about the allocation of water resources in California “lies . . . with Congress . . .”

(San Luis & Delta-Mendota Water Auth. v. Jewell, 747 F.3d 581, 593 (9th Cir. 2014)).

Ultimately, that is why we need legislation. We need it because the Courts and the federal agencies place the consequences for these decisions at your feet and you actually have the power to address these ills. At the same time, I believe you can direct the agencies to minimize the negative impacts of the decisions on these communities, while still requiring that they be thoughtful about the impacts their actions have on wildlife and other environmental values.

It is important to note that it is unquestionable that CA is in the midst of a drought. The hydrology and snowpack in the state is the only evidence you need to understand that. But the impacts of the crisis have been made worse by government decisions, interpretation of the law by fish agencies, and inaction by the Congress. It's undeniable. Lake Shasta has over 1 Million Acre Feet more of water stored today than it did during the worst drought in California history of 1977. Consider for a minute that as a result of the 2009 biological opinions that restrict water

pumping in the Delta, over 1.1 TRILLION gallons of water have been flushed to the ocean. And there have been countless other laws and government decisions on the management of California's water resources that have been just as frustrating. That is water that is lost forever and the impact of that lost water is felt most by cities, communities, business and farmers across the state. All while the people of the state are being forced to kill off their landscapes, capture shower water, not flush their toilets regularly, and watch their children play Saturday morning soccer on fields that resemble a sheet of sandpaper. In my opinion, the government can't have it both ways. The government cannot make decisions to flush that amount of water, while bemoaning the "drought". Not with a straight face, anyway. Simply put, the people of California are out of water because of decisions made by the people that represent them. And those decisions have resulted in devastating consequences.

From my perspective, both H.R. 2898, the Western Water and American Food Security Act of 2015, and S. 1894, the California Emergency Drought Relief Act of 2015, are efforts to address the problems we are seeing in our communities but they take very different approaches to address the issues we face. Therefore, I am deeply appreciative of your willingness to hold a legislative hearing. I am also optimistic that Members of Congress can bridge their differences between the two bills because absent enactment of legislation that gives more explicit direction to agencies, we will see no relief from the situation we face.

To that end, I want to provide constructive suggestions. Last year, a broad cross-section of local community leaders, such as the mayor of Fresno and growers from all over the Central Valley, came together to provide a unified set of concepts that we believed would be helpful for bridging the differences between last year's bills. I believe these concepts are still applicable to the bills before you today. Therefore, we ask that you:

- Provide congressional direction concerning the operation of the Central Valley Project and the State Water Project to ensure sufficient operational flexibility to restore water supply and water supply reliability. The operators of these projects must be able to capture water from the Delta during periods of higher flows and move water from north to south in a rational way.
- Extend the provisions of any legislation for a period of time that will allow communities to establish sound long term water supplies for their future;
- Establish a process that could lead to increased storage in a reasonable timeframe;
- Ensure that additional burdens are not placed on the State Water Project as a result of congressional action; and
- Recognize that the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changed conditions since its authorization, including the reality of federal budget constraints.

Both bills address most of these issues, but I believe the House proposal gives better direction to the agencies on how they should operate the projects and is a bill that, unlike the Senate bill,

offers permanent solutions. Nevertheless, we think the differences are surmountable with actual interest in finding a resolution. Again, thank you for the invitation to testify, and I am prepared to answer any questions you have.

From: Sarah Woolf

Sent: Monday, October 5, 2015 2:41 PM

To: Bernhardt, David L.

CC: Johnny Amaral (jamaral@westlandswater.org)

Subject: Re: Invitation to Testify before the Senate Committee on Energy and Natural Resources on October 8, 2015 at 9:30am

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Thank you,

Sarah Woolf

Water Wise

██████████@██████████
559-██████████

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Subject: Invitation to Testify before the Senate Committee on Energy and Natural Resources on October 8, 2015 at 9:30am
Date: October 5, 2015 at 2:21:04 PM PDT
To: "[REDACTED]@[REDACTED].[REDACTED]" <[REDACTED]@[REDACTED].[REDACTED]>
Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>

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202.224.3607

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From: Bernhardt, David L.
Sent: Tuesday, October 6, 2015 6:03 AM
To: Sarah Woolf; Johnny Amaral
Subject: Testimony

The hard copies of your testimony were delivered to the committee and accepted at 8:50 a.m.

David

██████████

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From: Johnny Amaral
Sent: Tuesday, October 6, 2015 8:29 AM
To: David Bernhardt
Subject: Fwd: Testimony of The Honorable David G. Valadao

Best,

Johnny Amaral

Begin forwarded message:

From: "Rojewski, Cole" <Cole.Rojewski@mail.house.gov>
Date: October 6, 2015 at 9:27:12 AM MDT
To: "jamaral@westlandswater.org" <jamaral@westlandswater.org>
Subject: Testimony of The Honorable David G. Valadao

Testimony of The Honorable David G. Valadao
Before the U.S. Senate Committee on Energy and Natural Resources
Legislative Hearing on Western and Alaska Water Legislation

Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and Members of the Committee.

I appreciate the invitation to testify before the Committee today on my legislation, H.R. 2898, the *Western Water and American Food Security Act of 2015*, which passed the House of Representatives on June 25, 2015.

Before we get into the details of the bill, I want to share a little bit about on the area I represent.

California's Twenty First Congressional District is unique. Located in the southern half of California's Central Valley, my district spans about 160 miles from the Fresno County line to just south of Bakersfield. An agricultural powerhouse, the Central Valley produces the majority of fruits and vegetables for the entire nation.

Minority populations make up over eighty percent of my constituency. Our communities face many unique challenges due to our rural setting, such as a lack of access to healthcare and education.

With another man-made drought evolving, the San Joaquin Valley is in danger of becoming a dust bowl unless immediate action is taken to change policies that put the needs of fish above the livelihood of people.

Today, parts of my district are suffering from unemployment rates as high as fifty percent. Farmers are forced to fallow thousands of acres of what was once productive farmland. Families are unable to provide for their children. And while food lines continue to grow, we must import food from other countries to meet demand. We have families living in shacks alongside the road.

As a life-long resident of the Central Valley, and a dairy farmer in Hanford, I have witnessed firsthand the challenges faced by many Valley residents when water resources become scarce.

It is difficult to watch my friends and neighbors, people I grew up with, suffer because of the laws passed by Congress and the method in which federal agencies have chosen to implement these laws. The San Joaquin Valley is facing a dire situation, and the simple fact of the matter is that we, as Members of Congress, need to add a bit of commonsense into the law.

In an effort to throw a lifeline to California, and all 12 Western states enduring years of record drought, I worked with my colleagues to act decisively.

H.R. 2898, the *Western Water and American Food Security Act* of 2015, would streamline regulatory processes, provide flexibility, and improve scientific efforts to restore some water supplies and provide better job certainty to farmers and entire communities in the San Joaquin Valley.

Although lack of precipitation contributes to the Central Valley's water supply situation, our problems are exacerbated by federal regulation and the decisions of Federal and State water managers.

The dedication of vast quantities of water for the protection of endangered fish is done so at a great cost to communities in California. Despite this, there is no scientific indication that the condition of the very fish they are trying to protect has improved.

Furthermore, there may be alternative methods to protect fish from predatory species that could allow for additional water supplies to be made available to those areas most in need.

My legislation would ensure that the federal government's decisions to protect listed species are effective and based on up-to-date science and are effective. H.R. 2898 also requires agencies to use the most accurate survey methods to determine how water projects can operate to maximize water utilization and deliveries.

We all know that the government cannot make it rain, however Congress has the ability to expand upon storing water in wet times so we can get through dry years. This why we need more reservoirs, yet feasibility studies that began over a decade ago are still incomplete today, at the cost of millions of taxpayer dollars.

H.R. 2898 improves the process to build new storage on a west-wide basis through provisions modeled after the Water Resources Reform and Development Act and making common sense changes to the Safety and Dams Act. Reducing red tape could prevent additional years of inaction.

This legislation is extremely measured, given the carnage caused by the actions of federal involvement. The language regarding California that passed the House of Representatives is very similar to the language negotiated with the Senate in 2014. I believe it is reasonable to continue our dialogue from where our conversation ended, rather than where it began.

I've lived first hand with the challenges the Western United States faces because of this epic drought. I've seen the harm it's done to people and jobs, and its ever-growing impact on the environment and I remain hopeful that Congress can find a solution to provide relief to all those suffering not just in California, but for all the west. We stand ready to work with you to get this done.

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

From: Bernhardt, David L.
Sent: Tuesday, October 6, 2015 8:54 AM
To: Johnny Amaral
Subject: Re: Testimony of The Honorable David G. Valadao

Thanks

David Bernhardt

On Oct 6, 2015, at 9:29 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:

Best,

Johnny Amaral

Begin forwarded message:

From: "Rojewski, Cole" <Cole.Rojewski@mail.house.gov>
Date: October 6, 2015 at 9:27:12 AM MDT
To: "jamaral@westlandswater.org" <jamaral@westlandswater.org>
Subject: Testimony of The Honorable David G. Valadao

Testimony of The Honorable David G. Valadao
Before the U.S. Senate Committee on Energy and Natural Resources
Legislative Hearing on Western and Alaska Water Legislation

Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and Members of the Committee.

I appreciate the invitation to testify before the Committee today on my legislation, H.R. 2898, the *Western Water and American Food Security Act of 2015*, which passed the House of Representatives on June 25, 2015.

Before we get into the details of the bill, I want to share a little bit about on the area I represent.

California's Twenty First Congressional District is unique. Located in the southern half of California's Central Valley, my district spans about 160 miles from the Fresno County line to just south of Bakersfield. An agricultural powerhouse, the Central Valley produces the majority of fruits and vegetables for the entire nation.

Minority populations make up over eighty percent of my constituency. Our communities face many unique challenges due to our rural setting, such as a lack of access to healthcare and education.

With another man-made drought evolving, the San Joaquin Valley is in danger of becoming a dust bowl unless immediate action is taken to change policies that put the needs of fish above the livelihood of people.

Today, parts of my district are suffering from unemployment rates as high as fifty percent. Farmers are forced to fallow thousands of acres of what was once productive farmland. Families are unable to provide for their children. And while food lines continue to grow, we must import food from other countries to meet demand. We have families living in shacks alongside the road.

As a life-long resident of the Central Valley, and a dairy farmer in Hanford, I have witnessed firsthand the challenges faced by many Valley residents when water resources become scarce.

It is difficult to watch my friends and neighbors, people I grew up with, suffer because of the laws passed by Congress and the method in which federal agencies have chosen to implement these laws. The San Joaquin Valley is facing a dire situation, and the simple fact of the matter is that we, as Members of Congress, need to add a bit of commonsense into the law.

In an effort to throw a lifeline to California, and all 12 Western states enduring years of record drought, I worked with my colleagues to act decisively.

H.R. 2898, the *Western Water and American Food Security Act of 2015*, would streamline regulatory processes, provide flexibility, and improve scientific efforts to restore some water supplies and provide better job certainty to farmers and entire communities in the San Joaquin Valley.

Although lack of precipitation contributes to the Central Valley's water supply situation, our problems are exacerbated by federal regulation and the decisions of Federal and State water managers.

The dedication of vast quantities of water for the protection of endangered fish is done so at a great cost to communities in California. Despite this, there is no scientific indication that the condition of the very fish they are trying to protect has improved. Furthermore, there may be alternative methods to protect fish from predatory species that could allow for additional water supplies to be made available to those areas most in need.

My legislation would ensure that the federal government's decisions to protect listed species are effective and based on up-to-date science and are effective. H.R. 2898 also requires agencies to use the most accurate survey methods to determine how water projects can operate to maximize water utilization and deliveries.

We all know that the government cannot make it rain, however Congress has the ability to expand upon storing water in wet times so we can get through dry years. This why we need more reservoirs, yet feasibility studies that began over a decade ago are still incomplete today, at the cost of millions of taxpayer dollars.

H.R. 2898 improves the process to build new storage on a west-wide basis through provisions modeled after the Water Resources Reform and Development Act and making common sense changes to the Safety and Dams Act. Reducing red tape could prevent additional years of inaction.

This legislation is extremely measured, given the carnage caused by the actions of federal involvement. The language regarding California that passed the House of Representatives is very similar to the language negotiated with the Senate in 2014. I believe it is reasonable to continue our dialogue from where our conversation ended, rather than where it began.

I've lived first hand with the challenges the Western United States faces because of this epic drought. I've seen the harm it's done to people and jobs, and its ever-growing impact on the environment and I remain hopeful that Congress can find a solution to provide relief to all those suffering not just in California, but for all the west. We stand ready to work with you to get this done.

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

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From: Sarah Woolf
Sent: Tuesday, October 6, 2015 11:03 AM
To: Bernhardt, David L.
CC: Johnny Amaral
Subject: Re: Testimony

Thank you David. Are you in DC this week? Chris Kearney thought maybe you were not. Hopefully you are.

Also, do we plan on running the still shots on the screen while I talk? I am bouncing between speaking directly to the committee and not reading but I think the stills play a part in that.

Thank you,

Sarah Woolf

Water Wise

██████████@██████████
559-██████████

On Oct 6, 2015, at 6:02 AM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

The hard copies of your testimony were delivered to the committee and accepted at 8:50 a.m.

David

██████████

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From: Bernhardt, David L.
Sent: Tuesday, October 6, 2015 11:23 AM
To: Sarah Woolf
CC: Johnny Amaral
Subject: Re: Testimony

Sarah: Did you specifically talk to Chris about the Stills? I was not not sure they would actually agreed to it.

In regard to your oral remarks, when I testify, I tend to print my oral remarks in 16 point font on the top 1/2 of the page, and that way you can largely read your remarks without looking down and because your only using the top half of the page your head really does not move down. That said, I'm blind so you might be able to do the same thing with 14 point font.

I am on the road today and tomorrow, but I intend to meet you and Johnny et al at hotel before the hearing.

David Bernhardt

On Oct 6, 2015, at 12:03 PM, Sarah Woolf <[REDACTED]@[REDACTED]> wrote:

Thank you David. Are you in DC this week? Chris Kearney thought maybe you were not. Hopefully you are.

Also, do we plan on running the still shots on the screen while I talk? I am bouncing between speaking directly to the committee and not reading but I think the stills play a part in that.

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Water Wise

[REDACTED]@[REDACTED]
559-[REDACTED]

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David
[REDACTED]

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From: Sarah Woolf
Sent: Tuesday, October 6, 2015 11:26 AM
To: Bernhardt, David L.
CC: Johnny Amaral
Subject: Re: Testimony

I did not talk to Chris about the stills, I should have. Maybe I can submit them or something. I will talk with Johnny and you when we get there. See you on Thursday.

Thank you,

Sarah Woolf

Water Wise

██████████@██████████
559-██████████

On Oct 6, 2015, at 11:22 AM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

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Water Wise

██████████@██████████
559-██████████

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<DBernhardt@BHFS.com> wrote:

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David

██████████

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received this email in error, please notify us immediately by calling (303)-223-
1300 and delete the message. Thank you.

From: Johnny Amaral
Sent: Tuesday, October 6, 2015 1:33 PM
To: Sarah Woolf
CC: Bernhardt, David L.
Subject: Re: Testimony

When I had originally talked to David about this, he mentioned to me that perhaps Chris Kearny would be a little less likely to allow the visuals because it would force him to make it available to others. We can easily get digital copies of some of the stills from Gayle, but I don't think we want to push it too hard with Chris.

Best,

Johnny Amaral

On Oct 6, 2015, at 2:26 PM, "Sarah Woolf" <[REDACTED]@[REDACTED]> wrote:

I did not talk to Chris about the stills, I should have. Maybe I can submit them or something. I will talk with Johnny and you when we get there. See you on Thursday.
Thank you,

Sarah Woolf

Water Wise

[REDACTED]@[REDACTED]
559-[REDACTED]-[REDACTED]

On Oct 6, 2015, at 11:22 AM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

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In regard to your oral remarks, when I testify, I tend to print my oral remarks in 16 point font on the top 1/2 of the page, and that way you can largely read your remarks without looking down and because your only using the top half of the page your head really does not move down. That said, I'm blind so you might be able to do the same thing with 14 point font.

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David Bernhardt

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Also, do we plan on running the still shots on the screen while I talk? I am bouncing between speaking directly to the committee and not reading but I think the stills play a part in that.

Thank you,

Sarah Woolf

Water Wise

[REDACTED]@[REDACTED]
559-[REDACTED]

On Oct 6, 2015, at 6:02 AM, Bernhardt, David L.
<DBernhardt@BHFS.com> wrote:

The hard copies of your testimony were delivered to the committee and accepted at 8:50 a.m.

David

[REDACTED]

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From: Tom Birmingham
Sent: Tuesday, October 6, 2015 3:44 PM
To: 'David Longly Bernhardt'
Subject: Sarah's Testimony

David,

If you have a copy, can you share Sarah's testimony with me?

Thank you,
Tom

From: Rojewski, Cole

Sent: Wednesday, October 7, 2015 12:31 PM

To: jamaral@westlandswater.org; Bernhardt, David L. (DBernhardt@BHFS.com)

Subject: FYI House Dems Water Letter

Attachments: Letter to ENR Senators re HR 2898.pdf

Quick heads up about the attached letter House Dems sent today.

Thanks,
Cole

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

Congress of the United States
Washington, DC 20515

October 7, 2015

The Honorable Lisa Murkowski
United States Senate
709 Hart Senate Office Building
Washington, DC 20510

The Honorable Maria Cantwell
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

We are writing to express our concerns with H.R. 2898, the Western Water and American Food Security Act of 2015, which passed the House in July and will be a part of the upcoming legislative hearing in your Committee tomorrow. This bill does nothing to solve California's water crisis or address the drought impacting Oregon, Arizona, Washington and states throughout the West. Instead, H.R. 2898 preempts state laws, reduces management flexibility, eliminates protections for salmon and other endangered species, and rolls back our nation's fundamental environmental laws.

The State of California opposes federal legislation that would "weaken state and federal environmental protections, pre-empt state law and favor one region or economic sector of the state over another," which is exactly what this bill does. Moreover, this proposal would not support the State's groundbreaking work to address the drought through water conservation programs, infrastructure improvements, and innovative water recycling initiatives.

We are pleased that state and federal agencies have been making great progress by working proactively and collaboratively. These agencies should retain the statutory flexibility to best manage our water supply rather than the prescriptive language proposed in H.R. 2898. In fact, the Department of the Interior agrees that this bill is the wrong course of action because it would, "impede an effective and timely response to the continuing drought while providing no additional water to hard hit communities."

H.R. 2898 is also yet another attempt to chip away at the Endangered Species Act. Important protections have been targeted in recent legislation for the African elephant, greater sage grouse, gray wolf, northern long-eared bat, Sonoran desert tortoise, and many other species. H.R. 2898 simply adds the Delta smelt and several salmon and steelhead runs to the list of species that have been deemed as no longer needing protection.

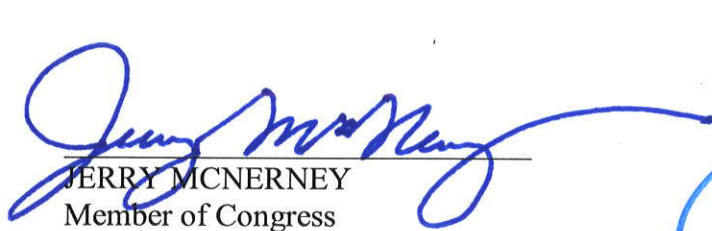
Further, the bill preempts state law, including California's long-standing system of water rights, overriding the regulations that Californians themselves have devised to administer the state's complex water supply system. An expansion of federal management over the world's most complicated water structure sets a bad precedent for states across the country.

H.R. 2898 also reaches into other Western states, including Oregon and Washington. By weakening protections for fish in California's Bay-Delta, this bill has potential far-reaching and damaging impacts on the Pacific Northwest's fishing industry, wildlife, and related economy. On multiple occasions, Senators and House Members of the Oregon delegation wrote to express parallel concerns with similar short-sighted legislation, H.R. 5781, that passed the House in the 113th Congress.

Furthermore, opposition to this legislation includes other key stakeholders such as commercial and sport fishermen, Native American tribes, environmental groups, and recreation employers. The Obama Administration also issued a veto threat against this bill because of its potential to undermine environmental laws.

Responsible solutions to the West's short and long-term water shortages require input from all stakeholders without prioritizing sectors of the economy or geographic regions over others, and without further endangering at-risk species. This historic drought demands an unprecedented compromise involving all affected parties. We remain committed to working on federal drought legislation that does not negatively impact the economies, farmers, communities, and environments of California, Oregon, Arizona, Washington, and other Western states.

Sincerely,



JERRY MCNERNEY
Member of Congress



JARED HUFFMAN
Member of Congress



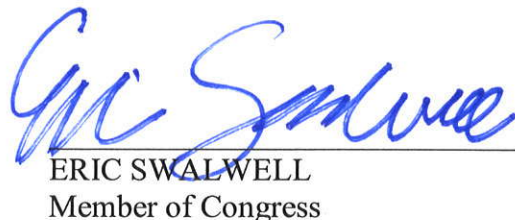
PETER DEFAZIO
Member of Congress



MARK DESAULNIER
Member of Congress



SUSAN DAVIS
Member of Congress



ERIC SWALWELL
Member of Congress



EARL BLUMENAUER
Member of Congress



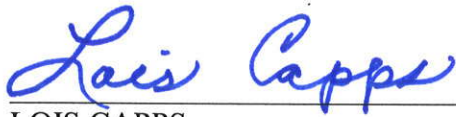
MIKE THOMPSON
Member of Congress



TED LIEU
Member of Congress



ZOE LOFGREN
Member of Congress



LOIS CAPPS
Member of Congress




MIKE HONDA
Member of Congress



BARBARA LEE
Member of Congress



ANNA ESHOO
Member of Congress



DORIS O. MATSUI
Member of Congress



JOHN GARAMENDI
Member of Congress



SUZANNE BONAMICI
Member of Congress



JACKIE SPEIER
Member of Congress



ADAM SCHIFF

Member of Congress



SCOTT PETERS

Member of Congress



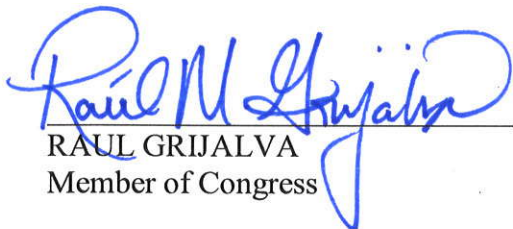
SAM FARR

Member of Congress



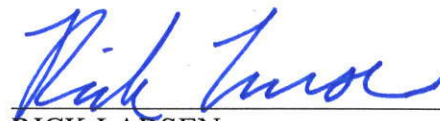
MARK TAKANO

Member of Congress



RAUL GRIJALVA

Member of Congress



RICK LARSEN

Member of Congress



SUZAN DELBENE

Member of Congress



JIM MCDERMOTT

Member of Congress



DEREK KILMER

Member of Congress

cc:

The Honorable Al Franken
The Honorable Martin Heinrich
The Honorable Mazie Hirono
The Honorable Angus King
The Honorable Joe Manchin III
The Honorable Bernard Sanders
The Honorable Debbie Stabenow
The Honorable Elizabeth Warren
The Honorable Ron Wyden
The Honorable Barbara Boxer
The Honorable Dianne Feinstein

From: Johnny Amaral
Sent: Wednesday, October 7, 2015 4:00 PM
To: David Bernhardt
CC: Sarah Woolf
Subject: Questions from dems to sarah

Why is the house bill preferable to the Senate Bill?

What are the similarities between the house and the senate bill?

Why is the Delta operations language better in the house Bill?

How has your farm been impacted by the water shortage?

Best,

Johnny Amaral

From: Bernhardt, David L.
Sent: Wednesday, October 7, 2015 4:46 PM
To: Johnny Amaral
Subject: Re: Questions from dems to sarah

I'm about to board a plane

Why is the house bill preferable to the Senate Bill?

As I said in my earlier testimony, I believe when you look at the five concepts I laid out the House bill hits a few more marks. But the point isn't, whose bill is better, the point is we need both CA Senators, the House members who want to help from both sides of the aisle and this committee to find some common ground and send a bill to the president that can become law. Both bills are efforts to do that.

What are the similarities between the house and the senate bill?

Both bills attempt to address water project operations, both bills look for additional storage both bills are efforts to improve the situation and they are both meaningless if nothing passes.

Why is the Delta operations language better in the house Bill?

I believe it provides greater clarity and is likely to result in greater certainty for our communities' water supply, while still being mindful of the need to preserve the existence of wildlife species.

How has your farm been impacted by the water shortage?

She can answer

Best,

Johnny Amaral

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From: Johnny Amaral
Sent: Thursday, October 8, 2015 3:37 AM
To: David Bernhardt
Subject: Today

We're meeting in the hotel lobby at 8 o'clock to depart for Dirksen. Sarah wanted to get there about an hour before the hearing. Do you want to meet us at Dirksen?

Best,

Johnny Amaral

From: Bernhardt, David L.
Sent: Thursday, October 8, 2015 4:03 AM
To: Johnny Amaral
Subject: Re: Today

Ok.

David Bernhardt

> On Oct 8, 2015, at 6:37 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:
>
>
> We're meeting in the hotel lobby at 8 o'clock to depart for Dirksen. Sarah wanted to get there about an hour before the hearing. Do
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> Best,
>
> Johnny Amaral
>
>

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From: Johnny Amaral
Sent: Thursday, October 8, 2015 5:01 AM
To: Bernhardt, David L.
Subject: Re: Today

We just departed the hotel for Dirksen.

Best,

Johnny Amaral

> On Oct 8, 2015, at 7:02 AM, "Bernhardt, David L." <DBernhardt@BHFS.com> wrote:

>

> Ok.

>

> David Bernhardt

>

>

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>> Johnny Amaral

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From: Johnny Amaral
Sent: Thursday, October 8, 2015 5:05 AM
To: Bernhardt, David L.
Subject: Re: Today

Were going to a coffee shop in Dirksen to meet you

Best,

Johnny Amaral

> On Oct 8, 2015, at 8:03 AM, "Bernhardt, David L." <DBernhardt@BHFS.com> wrote:

>

> I'm on my way there. I'm not sure 100she is going to be able to get into the hearing room until close to nine. I have the material she wanted printed.

>

> David Bernhardt

>

>

>> On Oct 8, 2015, at 8:01 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>>

>>

>> We just departed the hotel for Dirksen.

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>> Best,

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From: Bernhardt, David L.
Sent: Thursday, October 8, 2015 6:54 AM
To: Johnny Amaral
Subject: Favorites
Attachments: 10 8 15 Kightlinger Testimony.pdf; ATT00001.txt

http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=b69bd770-cb95-448f-939c-47357871ec6d

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Testimony of Jeffrey Kightlinger, General Manager
Metropolitan Water District of Southern California

S.1894

California Emergency Drought Relief Act of 2015
SUPPORT AND SEEK AMENDMENTS

H.R. 2898

Western Water and American Food Security Act of 2015
NO POSITION

Chairman Murkowski and Ranking Member Cantwell:

On behalf of the Metropolitan Water District of Southern California, I would like to thank you for the opportunity to testify today. We appreciate your leadership and the ongoing efforts of the Committee to address the challenges gripping our state and much of the Western United States during this fourth year of an historic drought.

On September 22, 2015, the Metropolitan Board of Directors voted to support S.1894 and to seek certain amendments. At the present time, our Board does not have a position on H.R. 2898.

I wish to personally thank Senator Feinstein for her legislation. S. 1894 not only seeks to address the immediate water crisis, but provides much-needed direction to better prepare for future droughts and achieve California's co-equal goals of providing reliable water supplies while restoring the Sacramento-San Joaquin Delta ecosystem.

Before addressing some of the legislative or policy specifics, I would like to take a step back to provide some background on Metropolitan. In cooperation with our 26 member agencies, Metropolitan has done extensive planning and made significant investments that have allowed us to withstand this and future droughts and to prepare California for future water challenges we will face.



First MWD Board Meeting (December 29, 1928)

**Metropolitan: A History of Regional
Cooperation and Progress**

Every generation of Southern Californians has had to face drought and in every generation, Metropolitan has made the necessary investments to ensure water supply reliability for the region. Metropolitan was created by the California Legislature in 1928 to form a regional water cooperative of the rapidly urbanizing areas of Los

Angeles and Orange counties. In the throes of the Great Depression, voters of these counties approved \$220 million in bonds, funded through property taxes, to construct a 242-mile aqueduct from the Colorado River that would provide a needed water supply for future generations of Southern Californians. At that time, these urbanized areas had a combined assessed value of approximately \$2 billion. Today, urban Southern California has an assessed property value of approximately \$2 trillion. A secure reliable water supply has been one of the primary drivers fueling the great economic engine of this region for decades. If Southern California were a nation, it would be the 16th largest economy on the globe, just behind Mexico and ahead of Indonesia.

A generation after Metropolitan was formed, the district in 1960 became the cornerstone of the effort to build the California State Water Project. That same year, the state's voters approved bonds to finance the construction of the project. The SWP was the most expensive water project ever constructed and Metropolitan agreed to finance 50 percent of the project with a 75-year financing commitment. This water system, a modern engineering marvel, provided an additional water supply to the region from Northern California via the Feather River in the northern Sierra Nevada Mountains, down into the Sacramento River, then across the Delta. From there, pumps lift the water into aqueducts that eventually lead to the San Francisco Bay Area, Central Valley, and Southern California. This project now provides about 30 percent of Southern California's water supply. Some of the issues before us today pertain to how to best operate and manage this project amid new challenges of declining fish species, various stressors that threaten the health of the Delta estuary and climate change.

Federal and State Commitment to State Water Project



"Things do not happen. They are made to happen."

Drought: Lessons and Responses Past and Present

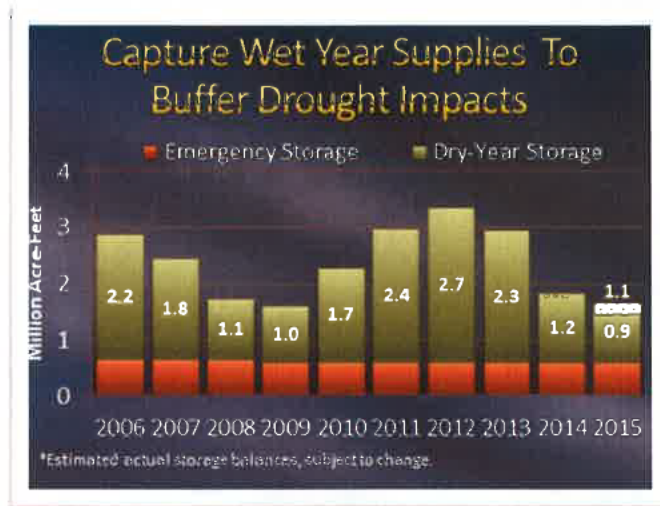
The weather of the West is marked by dramatic shifts in hydrology ranging from deluges to droughts. Yet, our economy depends on a steady and reliable water supply. Drought cycles in particular have played an important role in re-examining water policies to better prepare for the future.

A generation after the historic investment in the State Water Project came the drought of the late 1980s and early 1990s. This led to significant water shortages in the Southland and a complete rethinking of Metropolitan's water management programs, investments and planning objectives. Since that time, the region has spent billions of dollars to develop new and improved infrastructure that can transport and store imported water supplies in wet years in order to have sufficient supplies in reserve for drought and emergencies. Overall, Metropolitan has increased its network of local storage assets more

than 13-fold since the early 1990s. Metropolitan currently has capacity to store more than 5.5 million acre-feet of water above and below-ground. Thanks to these investments, we entered the current drought cycle with more water in storage than at any time in our history.

Investing in storage was one important lesson learned from previous droughts. Diversification of supply was another. Soon after managing through the drought of 1991, Metropolitan turned its attention to developing its first long-term water vision, our Integrated Water Resources Plan (IRP). That plan was adopted in 1996. It provided a road map for the coming

generation to expand conservation through plumbing code reforms and device subsidies to make homes and businesses more water efficient. Metropolitan also began to provide direct financial assistance to local agencies that sought to develop their own supplies including recycled water, groundwater cleanup and storage projects. While Southern California has five million more people than it did in 1985, total water use has not increased. Thanks to this lowering of per-capita water use, the region has conserved and stored more water rather than consuming it wastefully. The bottom line is this: Had we not reacted to the previous drought with sound improvements to our water management strategy, Southern California and all of the state would be in the throes of a water crisis far greater than what we are facing today.



Lake Oroville

And now, a generation after the drought of 1991, a much more severe drought is gripping California. It comes at a time when monumental water policy issues are before this Committee, Metropolitan, California and the West.

Historic Drought Conditions Require Unprecedented Actions

This drought is straining California and the Metropolitan system unlike any before. The northern portion of our distribution system depends on supplies arriving from Northern California via the State Water Project, yet the lack of a Sierra snowpack has significantly curtailed these deliveries. Our local supplies from Southern California's groundwater basins have been greatly reduced by the absence of rain. The physical ability to move water from our

Colorado River system to these basins had been limited or non-existent, requiring changes to this distribution system.



Turf Removal: Before and After

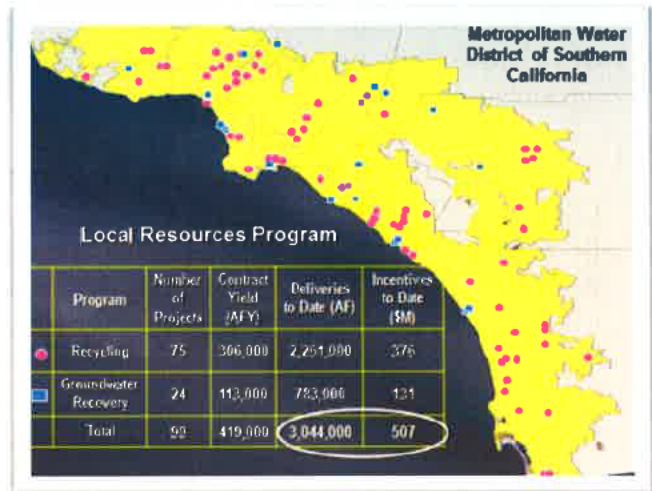
In response to the current drought, Metropolitan has invested in the largest conservation program not only in its history and California's, but the largest seen anywhere in the nation. Earlier this year, our Board directed \$450 million into a series of durable permanent conservation efforts such as rebates for turf removal, low-flow showerheads and toilets, and high-efficiency dishwashers and washing machines. We estimate that more than 170 million square-feet of turf will be removed as a result of this effort, which is more than three times the statewide goal set by Governor Jerry Brown in an executive order last April. The total conservation program is projected to save more than 70 million gallons of water a day for Southern California, or enough water for 160,000 households. The district is also conducting a \$5.5 million public

education and outreach campaign in five languages to help all Southern Californians make lasting and permanent reductions in the water they use. The campaign is getting the word out and Southland communities are meeting the goal set by Governor Brown for a 25 percent reduction in residential urban water use during this drought.

A New Metropolitan Vision Amid New Circumstances: Groundwater

To build on these past successes and prepare for future growth, climate change and other challenges to water supply, Metropolitan is currently updating its IRP, to provide an even more robust long-term water resources strategy to meet our mission of providing a high quality, reliable water supply for its service area. While the work is not complete and our Board has yet to make final decisions, the analysis to date is providing new and valuable insights.

Some of the most compelling findings relate to groundwater. Southern California is fortunate to have large and productive groundwater basins in parts of our service area. All have been carefully managed and operated for decades. Yet because of this drought, these groundwater basins have been tapped to nearly the full extent of their sustainable management ranges. The basin managers are telling us to expect lower yields in the future. Collectively, the loss in groundwater production is roughly equivalent to the amount of water necessary to serve a city the size of San Diego for a year.



While these groundwater basins are partially recharged by local rainfall, imported water provided by Metropolitan is absolutely essential to replenishing the basins. Metropolitan has provided financial assistance to develop recycled water for years, but we are now exploring a maiden effort with the Sanitation Districts of Los Angeles County to develop the largest single water recycling project in the nation. Currently, the Sanitation Districts operate a facility near the Los Angeles International Airport that treats wastewater and discharges it to the Pacific Ocean. We are exploring large-scale recycling to purify this water to drinking water standards and use it to replenish groundwater basins in at least three counties. This project will take decades for full build-out and will be an important new source of water. Yet even at full capacity, it will not make up for all of the expected decrease in yield from the region's groundwater basins.

The Colorado River

Southern California depends on the Colorado River for about 25 percent of our supply. But the River has been experiencing drought conditions since the turn of the



Lake Mead behind Hoover Dam

century. The long-term studies point to an imbalance between supply and demand. Overall, California has the largest share of the River among the seven western states, with 4.4 million acre-feet of an allocated supply. Yet Metropolitan's share of the state's supply is only 550,000 acre-feet. Our Colorado River aqueduct has a capacity of more than twice that, at 1.2 million acre-feet. The aqueduct historically ran at full capacity

when that water was needed because of surplus conditions on the River and unused

allocations by other states. But that chapter in our water history is now behind us. Ahead of us is the challenge to work cooperatively among the Basin states and with our intra-state agriculture partners.

A leading example in our partnership with agriculture is the one we have forged in California's Palo Verde Valley in the Sonoran Desert south of the Mojave Desert and within Riverside and Imperial counties. Palo Verde has some of the most senior water rights on the River. We have a voluntary program with farmers in that valley to fallow a portion of their land in drought cycles, when we at Metropolitan are looking for additional water supplies for a full aqueduct. We paid farmers to enter this program and provide additional compensation every year in which we fallow lands for supply. In so doing, we have provided the community with funds for local economic development projects while supporting agriculture. Metropolitan also owns farmland in this valley. Recently our Board of Directors approved the purchase of additional lands in the valley, providing even greater opportunities to both maintain agriculture activities and provide water supplies to Metropolitan when needed. This project alone does not solve our challenge of stabilizing our overall supply of water from the Colorado River. But it does exemplify the kind of partnership that is possible and needed in the years ahead. All of us who depend on the Colorado River must work towards closing the gap between supply and demand in each state.

Federal Government Can Help California Meet Drought Challenges

These various examples of what is happening inside Metropolitan point to the fact that there is no single solution to Southern California's water challenge. We need to embrace an "all of the above" strategy to provide reliable water supplies in the future. This begins with local actions such as Southern California's longstanding commitment to conservation, more storage and sound groundwater management. While we have invested in many of these actions through local water rates, outside financial assistance can greatly accelerate progress. That is why partnering with the federal government is so important to meet the challenges ahead.

We support the efforts of S. 1894 to provide additional funding and foster regulatory incentives to ensure greater water supply reliability and reduce water use throughout our region. S. 1894 includes funding for the WaterSense labeling and certification program, and supports innovative water supply and conservation technologies. The federal government can also help us prepare for future droughts with long-term planning and projects that will expand our water supplies. S. 1894 includes a competitive grant program through Title XVI to authorize \$200 million in recycled water funding through 2020. Partnering in these investments can help diversify water portfolios throughout the West.

S. 1894: Fostering Progress in the Delta

An “all of the above” strategy also means that, while we will need more local supplies and conservation, imported supplies will remain the foundation on which we build. That is why hearings like this are so important to help us work together to solve the ongoing challenges in the Delta.

In California, every storm is precious. Every opportunity to safely capture supply is important. Wet periods can provide California the water to keep in storage to survive future droughts if there is sufficient storage to capture and adequate plumbing to move the supply. S.1894 has provisions that will allow us to manage storm flows better in the short-term and helps to develop long-term storage.

Both California’s State Water Project and the U.S. Bureau of Reclamation’s Central Valley Project face operational restrictions that threaten our ability to capture peak storm flows when they pass through the Delta. A few winters ago, as an example, the first major storm of the season in December brought a sub population of adult delta smelt, a state and federally listed species, southward toward the project pumps in a plume of turbid water. A small number of these fish were detected at the pumping facilities of the two projects. Within days the facilities were forced to the lowest levels of pumping for the year in an effort to protect the smelt. Meanwhile the water supplies flowing through the Delta were at the highest level of the year. A precious opportunity to capture water supplies was lost. As a result in the following weeks, the systems failed to capture a quantity of water that would have been sufficient to supply the entire city of Los Angeles for more than a year. And this lost opportunity occurred in the midst of a four-year drought when every drop was sorely needed. Moments like this have reinforced for Metropolitan the need to modernize the state’s water system’s infrastructure and to improve real-time monitoring and operations in the Delta so that sensitive species and public water supplies are both protected. S. 1894 is a prudent, positive and rational response to challenges such as this.

Regarding S. 1894, this testimony includes three attachments that help guide Metropolitan’s positions on this specific legislation and the Delta overall. In 2007, our Board set specific benchmarks to assess any potential solution to the Delta water system and ecosystems. Some proposals satisfy some of the benchmarks. Very few work to meet all the needs of the environment, reliable water supply, seismic risk, water quality and other challenges. Those benchmarks are attached. So are principles that the Board recently adopted to analyze federal proposals such as S. 1894. Lastly, Metropolitan’s Board approved a detailed position supporting S. 1894 while advancing a series of specific amendments. At the present time, our Board does not have a position on H.R. 2898, but we note that many provisions in the bill are similar to concepts set forth in S. 1894.

An important feature of S. 1894 is its emphasis on better monitoring on a real-time basis to understand the abundance and location of important fish species such as salmon and smelt in the Delta. While Metropolitan supports water supply restrictions when they are scientifically demonstrated to be necessary to protect endangered species, we firmly believe there are missed opportunities to safely capture water supplies within the confines

of the existing biological opinions that could be regained if the agencies had better information. Good monitoring and good measurement, using sound science, will lead to better management. We lost a number of opportunities to safely capture water back in 2013 and 2014. In 2015, with help from the federal agencies, California made great strides in effectively managing the system, learning from past mistakes. We will need more of this cooperative effort as we move forward. With even better monitoring and information, the agencies could do better tomorrow.

Working within the Endangered Species Act, we support actions to address ongoing conflicts between water supply operations and native fisheries through enhanced scientific modeling and real-time monitoring for the benefit of people and fish. Every effort to protect migrating fish species on the San Joaquin River system should be taken, including pilot efforts such as transporting some of these fish via barges. Sacrificing public water supplies as the solution has not worked and will not work, but there are significant opportunities to address ecosystem and fisheries issues that should be pursued.

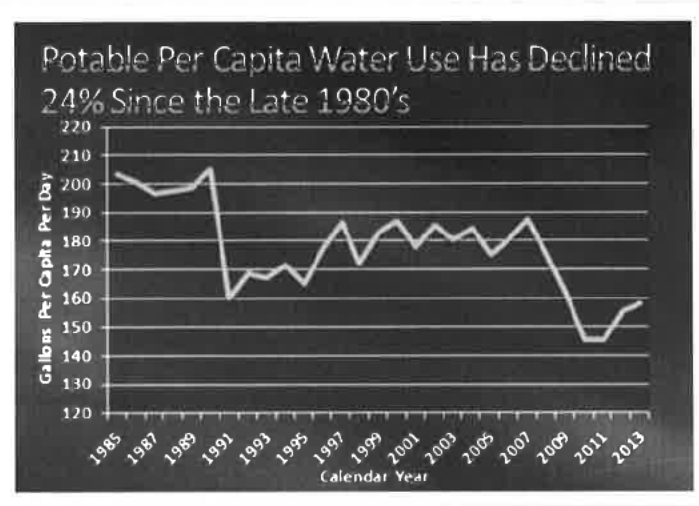
Among our drought legislation priorities is the need for legislative solutions that have strong bipartisan support. Southern California is an extraordinarily diverse region. Metropolitan could not function as the leading water planner for Southern California if our board members did not work jointly to embrace the common challenge and find that common ground. This same spirit of cooperation and collaboration must guide efforts to successfully address water issues today and in the future. Water is not a partisan issue. It's a health and safety issue. Fish, farms and families all need water to survive and our economy depends on it. We need everyone working together to address the drought impacting California and help us prepare for a reliable water future in the West.

California's Water Action Plan: A State-Federal Partnership

At this moment in California's fast-evolving water history, we find ourselves at more than a single crossroad. S.1894 attempts to address the immediate crisis of drought and provide important direction to better manage existing water systems to endure future droughts. The California WaterFix process, supported by the state and federal administrations, is advancing a historic set of long-term improvements to the water system. These plans seek to address existing conflicts with sensitive fish species and protect public water supplies for generations to come from seismic events, floods, climate change and other challenges. The state and federal agencies are on track to have a final plan next year and that will be the time when Metropolitan and other participating public water agencies decide whether to invest in the improvements and water operations as advanced by this plan.

The tandem California EcoRestore program seeks to accelerate restoration of tidal marsh and floodplain habitat, most of which has been lost over the past century and a half due to reclamation activities. Additionally, the State Water Resources Control Board is embarking on proceedings to identify water flow objectives and responsibilities in both the San Joaquin and Sacramento river watersheds.

The challenges are many and they are outlined in Governor Brown's Water Action Plan, which Metropolitan fully embraces. The plan advances the much-needed "all of the above" strategy. As an example, conservation is happening at record levels throughout California during this drought, but it must become a permanent and lasting change in our lifestyle. Lowering water demand has been part of Metropolitan's portfolio approach since the 1990s and will continue to be. Yet one worthy water management effort does not negate the need for another. In fact, one effort builds upon another. We also need modernized systems to safely and efficiently move water supplies from one part of the state to other regions. We need additional storage above- and below-ground to store these conveyed supplies. We need action at a local, regional, and state level to plan, invest, and innovate to provide safe reliable water supplies in ways that also protect the environment. This action plan, and the steps underway at Metropolitan, embrace every tool in the toolbox to make progress in the months and years ahead.



The Delta: A Key to Statewide Progress

Because of its strategic position in California water supply, the Delta is inevitably a center of political and policy discourse on water for the state and the West. John Muir explored the Sierra and coined it our Range of Light. In an average year, the Sierra Nevada is our largest supply of water, whether it be rain or snow. The 700,000 acre Delta is where the rivers of the western Sierra merge before heading to San Francisco Bay. It is the largest estuary on the West Coast of the Americas, home to 750 species of plants and animals, and supplies freshwater to more than 27 million Californians and three million acres of farmland. It is at the center of any reasoned and rational discussion on the future of water management in our state.

Our state has many regions, many views and many perspectives. Yet there is no getting around the need to properly manage the Delta and the water supply that flows through it for the good of the California economy and environment. With a sense of common purpose, we recognized that the consequences of inaction are simply unacceptable. There is no viable status quo. And we are confident that there is sufficient common ground that can be found via S.1894 and other proposals now before Congress.

We thank you for your efforts and leadership on these issues. We hope that you will look to Metropolitan to continue to be a constructive participant in addressing the many

water challenges that we all face today and in the future. Thank you again for the opportunity to testify today.

- **Board of Directors**
Water Planning and Stewardship Committee

September 11, 2007 Board Meeting

Revised 8-4

Subject

Adopt criteria for conveyance options in implementation of Long Term Delta Plan

Description

Overview In June 2007, Metropolitan's Board approved a Delta Action Plan that provides a framework for actions to build a sustainable Delta and reduce conflicts between water supply conveyance and the environment (**Attachment 1**). Additional detailed information on potential near-, mid-, and long-term actions, and their water supply planning implications, were provided in written and oral reports to the Board in July and August 2007.

The approved Delta Action Plan also established a process where staff would provide monthly updates to the Board on Delta-related processes and would seek board direction on key issues including: Bay-Delta legislation; administrative decision processes; and legal and regulatory decisions.

This board letter requests further board direction on key conveyance components being discussed in the Governor's Delta Vision Process and the Bay-Delta Conservation Plan. Other near-term actions previously brought before the Board are summarized below.

Near-Term Actions. Recent action by the California Department of Water Resources and U.S. Bureau of Reclamation to curtail pumping of the State Water Project and Central Valley Project from the Delta to protect Delta smelt underscores the incompatibility of how water is conveyed to California's economy and protection of in-Delta native fisheries. While the shutdown was temporary, the underlying need to protect Delta smelt and other fisheries is likely to challenge Metropolitan and other Delta export users with more prolonged water supply curtailments and potentially serious economic consequences throughout the state prior to the implementation of a long-term solution. The following is a set of near-term actions previously brought before the Board that staff is moving forward on:

- **Post-Event Emergency Response Plan.** Analyses from the Delta Risk Management Study state there is a significant risk of levee collapse from an earthquake or flood in the Delta. Consistent with April 2007 board direction regarding implementing a Post-Event Strategy, efforts are being made to secure state approval and funding for a Delta Levees Emergency Preparedness and Response Plan, including pre-placement of rock and material in key locations throughout the Delta.
- **Real-Time Operations and Monitoring.** Current operations of the state and federal pumping plants in the Delta rely heavily on prescriptive flows and water quality standards to assist in maintaining a viable ecosystem for fisheries. However, these standards do not take into account the natural variability of runoff patterns, tidal cycles, temperature and other factors that significantly affect fish migration and consequently salvage of fish at the state and federal pumping plants. In an effort to minimize fish salvage, efforts are being made to fund and implement real-time fish monitoring/tracking along with integrated, real-time operations of the Delta Cross Channel and Sacramento and San Joaquin River flows.
- **Temporary & Reversible Eco-Crescent/Middle River Corridor.** In addition to the real-time operations and monitoring, additional near-term, stop-gap efforts are being further analyzed to turn a portion of the estuary from a habitat area with conflict for smelt into a safe haven, away from the north-to-south movement of water supplies to the Bay Area, Central Valley and Southern California. This effort would include a series of temporary and removable rock barriers with tidal-gates, located strategically on four waterways in the

southern Delta, to create a physical separation between the flows for water supply and the nearby rearing habitat for smelt. These temporary structures would only be in place and operated from February through June when Delta smelt enter the Delta to spawn and rear. This project would include funding for real-time monitoring and operation of these gates, and assessments would be made to ascertain whether a more permanent structure should be constructed later as part of a more comprehensive Delta Vision.

Long-Term Delta Vision Alternatives. In addition to the ongoing effort to resolve near-term issues, two efforts are in progress to develop long-term solutions to resource management conflicts within the Sacramento-San Joaquin Bay Delta system: the Bay-Delta Conservation Plan (BDCP) and the Governor's Delta Vision process. The BDCP is a voluntary effort initiated by water user representatives and state/federal fishery regulatory agencies to develop a conservation plan that will serve as the basis for long-term federal and state endangered species act operational permits for the SWP and CVP. The Governor's Delta Vision process is an effort to develop a specific long-term alternative for addressing Delta resource conflicts and a strategic plan for implementation.

As initially reported to the Board at its workshop in July 2007, four alternatives are under discussion by the Governor's Delta Vision Stakeholder Coordination Group, which advises the Blue Ribbon Task Force. These alternatives include:

1. Existing Delta (with fortified levees)
2. Eco-Crescent/Middle River Corridor Conveyance
3. Dual-Intake Facility (Eco-Crescent + Isolated Conveyance Facility)
4. Fully Isolated Facility

On August 4, 2007, the Delta Vision Stakeholder Coordination Group submitted a report to the Blue Ribbon Committee that narrowed the list of recommended alternatives for further analysis to the Eco-Crescent/Middle River Corridor Conveyance and the Dual-Intake Facility. In addition to these alternatives, the Governor's Blue Ribbon Task Force has received a number of other alternatives from various groups and individuals. The Task Force has begun narrowing down the alternatives and intends to select a Delta Vision to move forward in its Phase I Report to the Governor's cabinet-level Delta Vision Committee. The Phase I Report is due on January 1, 2008,¹ and will include a vision for sustainable management of the Delta's multiple uses, resources and ecosystem.

Phase II of the Governor's Delta Vision effort includes development of a Strategic Plan to drive implementation of a Vision, addressing related governance, funding and system management issues relative to that Vision.

Proposed Direction on Delta Vision Alternatives. In August, the four alternatives listed above were reviewed with the Board. Each alternative was evaluated with feasibility-level modeling of water supply and water quality impacts, and quantitative information regarding environmental enhancement and costs. The alternatives were also compared to the Metropolitan Board principles (April 2006) relating to development of a long-term Delta Vision.

Although Metropolitan staff is continuing to participate in the collaborative BDCP and Delta Vision efforts to further analyze the pros and cons of these alternatives, after a review of existing analyses and board policies, staff proposes the Board adopt the following criteria to further clarify Metropolitan's position on the water supply conveyance element of the long-term solution:

1. **Provide water supply reliability.** Conveyance options need to provide water supply reliability consistent with DWR's most recent State Water Project Reliability Report (2005).
2. **Improve Export Water Quality.** Conveyance options should reduce bromide and dissolved organic carbon concentrations. Existing in-Delta intakes cause direct conflict between the need to reduce organic carbon to meet stricter urban drinking water standards, and the need to increase carbon to promote a healthy food web for fish.

¹ The Delta Vision Committee is comprised of the Secretary of Resources as Chair, and the Secretaries of Business, Transportation & Housing, Food & Agriculture, and Cal-EPA; and the President of the California Public Utilities Commission.

3. Allow Flexible Pumping Operations in a Dynamic Fishery Environment. Water supply conveyance options should allow the greatest flexibility in meeting water demands by taking water where and when it is least harmful to migrating salmon and in-Delta fish species. All options should reduce the inherent conflict between fisheries and water conveyance.
4. Enhance ~~Delta Ecosystem~~ Fishery Habitat Throughout Delta. Conveyance options should provide the ability to restore fishery habitat throughout the entire Delta ~~(not just in partial areas)~~ and minimize disruption to tidal food web processes, and provide for fluctuating salinity levels.
5. Reduce Seismic Risks. Conveyance options should provide significant reductions in risks to export water supplies from seismic-induced levee failure and flooding.
6. Reduce Climate Change Risks. Conveyance options should reduce long-term risks from salinity intrusion associated with rising sea levels. Intake locations should be able to withstand an estimated 1- to 3-foot sea-level rise in the next 100 years.

Future Recommendations. As outlined in Metropolitan's Delta Action Plan, staff will seek board direction on other key issues including funding for environmental restoration, governance and financing issues, levee improvements, potential infrastructure or floodway corridors, sizing and location of an isolated facility component, potential legislation, and other key components of the Governor's overall Delta Vision.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). For future, and not yet known, proposed projects, the appropriate lead agencies will be responsible for complying with all applicable federal and state environmental laws and regulations.

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and conveyance criteria, as described in this board letter, for water supply conveyance options in a long-term Delta Vision.

Fiscal Impact: None

Business Analysis: The recommended conveyance criteria would be beneficial in reducing conflict while enhancing the Delta ecosystem, water quality, and water supply reliability. It would also reduce longer-term risks associated with seismic-induced flooding and sea-level rise.

Option #2

Do not adopt conveyance criteria.

Fiscal Impact: None

Business Analysis: Metropolitan's ability to influence conveyance criteria will be significantly reduced.

Criteria established by others may not meet Metropolitan's water supply and financial interests.

Staff Recommendation

Option #1


Stephen N. Arakawa
Manager, Water Resource Management

9/7/2007
Date


for Jeffrey Kightlinger
General Manager

9/7/2007
Date

Attachment 1 – Metropolitan Water District Delta Action Plan

BLA #5548

METROPOLITAN WATER DISTRICT DELTA ACTION PLAN

I. Overview

The Delta is the hub of California's water supply and is critically important to the entire state. The Delta is in a state of ecological crisis and is not sustainable unless action is taken. Building a sustainable Delta will require significant investment and will take decades. The Delta Action Plan must prioritize immediate short-term actions to stabilize the Delta while an ultimate solution is selected, and mid-term steps to maintain the Delta while the long-term solution is implemented. By 2020, California should have a long-term solution for the Delta in place that can be adjusted and adaptively managed to deal with the coming changes from climate change and California's continued population growth.

II. Short-Term Action Plan

The Governor's Delta Vision Process calls for a recommendation from the Delta Vision Blue Ribbon Task Force to be made by January 2008. SB 27 (Simitian, et al.) urges the Task Force to make its recommendation based on the findings of the Public Policy Institute of California Delta Report for legislation to be enacted in 2008. While 2008 will be the year for selecting a course of action on the Delta, actions must be taken over the next 18 months to stabilize the current situation. These actions include the following: securing state and federal Endangered Species Acts take authorization; emergency preparedness steps to prepare for possibility of catastrophic failure in the event of earthquake or flood; actions to enhance habitat for Delta smelt and other pelagic species; completion of the Bay-Delta Conservation Plan (BDCP); and actions to begin work on ecosystem restoration projects that will help species regardless of which ultimate solution is selected (e.g., marsh restoration, island rebuilding.)

III. Mid-Term Action Plan

Upon selection and enactment of an ultimate Delta solution, it will likely take ten years or more to complete environmental documentation and construct new facilities. During this period, it will be necessary to maintain the stabilization process of the Delta through the following actions: continue implementation of the BDCP projects; continue with selected habitat and fishery improvements to improve Delta native species; begin implementing flood control protections, including bypasses and levee improvements; finalize site selection and environmental documentation for new storage projects; implement new governance structures for managing the Delta; and undertake implementation of the long-term Delta solution.

IV. Long-Term Action Plan

The Long-Term Action Plan must take a global, comprehensive approach to the fundamental issues and conflicts in the Delta to result in a truly sustainable Delta. A piecemeal approach cannot satisfy the many stakeholders that have an interest in the Delta and will fail; there must be a holistic approach that deals with all issues simultaneously. In dealing with the basic issues of the Delta, solutions must address the physical changes required, as well as the financing and governance. There are three basic elements that must be addressed: Delta ecosystem restoration; water supply conveyance; and flood control protection and storage development.

A. Delta Ecosystem Restoration – A complete Delta restoration plan must address land use, growth, agriculture, water usage and conveyance, and the aquatic and land habitat of the Delta through the following elements:

- **Bay-Delta Conservation Plan** – The BDCP is a subset of Delta restoration primarily focused on the aquatic environment of the Delta and will address fishery issues.

- **Habitat Land Acquisition and Restoration** – A portion of the Delta will need to be restored to native marsh habitat for protection of aquatic and terrestrial species.
- **Sustainable Agriculture** – Programs will be needed to maintain sustainable agriculture within the Delta in ways that limit oxidization of soils, rebuild Delta islands, limit carbon production, improve water quality and provide habitat opportunities.
- **Governance** – Management of Delta restoration will require a governance structure such as a conservancy or special district that has financing and land use powers and can manage a program within multiple counties.
- **Financing** – Costs of restoration must be shared by multiple parties with water exporters and other utilities helping finance the BDCP, the state paying for broad public benefits, developers within the Delta area paying for development rights, etc.

B. Water Supply Infrastructure – The current practice of using Delta channels and levees for water conveyance is not sustainable. Delta species require fluctuating salinity levels that will be harmful to drinking water quality. The levees are unstable and pose a constant threat of collapse. In addition, global warming threatens water supply with rising sea levels and increased flooding. Either new Delta conveyance infrastructure must be constructed or there will be significant reductions in Delta exports requiring new water facility development elsewhere to replace lost water supplies. Important elements of this needed infrastructure include:

- **Isolated Facility** – If water supply is to be maintained, that water must be separated from Delta water supplies through construction of an isolated facility either in or around the Delta. The three isolated facility alternatives in the PPIC Report must be analyzed to determine which performs best for water supply reliability, is cost-effective, protects against earthquakes and floods, provides water quality, deals with rising sea levels and allows for Delta salinity fluctuation for native species protection.
- **Eco-Delta/Reduced Exports** – If an isolated facility is not constructed, the PPIC Report recommends that a fluctuating salinity Delta be achieved primarily through a reduction in water exports. This approach must be thoroughly analyzed to determine the economic consequences of loss in water supply, whether reduced exports will actually protect species, and identify additional water supply facilities that would be required.
- **Governance** – Management of the State Water Project should be given to a separate agency tasked with the single mission of managing and operating the Project. This would separate the utility function from the Department of Water Resources thereby removing conflicts within DWR in its role of operating a utility for certain contractors while providing state-wide water planning. Appropriate forms of such an independent agency include a special district or a joint powers authority. This new entity would continue to be regulated by state and federal agencies and all applicable laws.
- **Financing** – State and federal water contractors should pay for the operation and management of the water supply projects, including construction of new water infrastructure such as an isolated facility. A state decision to reduce exports should be financed by the state including payment for lost agriculture lands and financing for replacement of water supplies.



• **Board of Directors**
Communications and Legislation Committee

8/18/2015 Board Meeting

Revised 8-4

Subject

Adopt legislative priorities for federal drought legislation

Executive Summary

Multiple federal bills have been introduced in Congress to respond to drought conditions in the western United States, particularly in California. The proposed bills vary widely in approach and have been the subject of considerable debate and media attention. To ensure a consistent response to these proposals, staff recommends the Board adopt specific legislative priorities that articulate Metropolitan's policy goals to help California respond to current drought conditions and prepare for long-term future droughts.

Details

In response to historic drought conditions in the West, California's Congressional delegation introduced several bills in 2014 to provide financial, regulatory or policy-based assistance to California. Despite the broad concern over increasingly severe reports of drought conditions, however, none of those bills received approval from both the House of Representatives and the Senate.

This year, drought conditions have worsened, and several members of the California delegation are again attempting to bring California relief through federal legislation. Earlier this year, Senator Boxer and Representative Napolitano reintroduced S. 176 and H.R. 291, companion legislation entitled the Water in the 21st Century Act, for which Metropolitan has adopted support positions (based on identical legislation introduced and supported in the 113th Congress). On June 25, Representative Valadao introduced H.R. 2898, the Western Water and American Food Security Act of 2015, cosponsored by Representatives Calvert, Costa, and 23 other members of Congress. On July 8, Representative Huffman introduced H.R. 2983, the Drought Recovery and Resilience Act of 2015 with Senator Boxer introducing companion legislation S. 1837 on July 22. Additionally, on July 29, Senator Feinstein introduced S. 1894, the California Emergency Drought Act of 2015. Members from other western states are also expected to introduce legislation related to the drought, in addition to several other single subject bills that have been introduced related to water supply and system improvements.

To date, the introduced bills vary widely in their approaches. Some are aimed at funding long-term water supplies, such as recycling. Others attempt to streamline regulations, expand operational flexibility, fund conservation or expedite current water supply projects. There has been strong partisan difference in the approaches that has made consensus difficult to achieve. Given the severity of the current drought and the likelihood of future water shortages, legislation that provides federal funding and regulatory assistance, and recognizes scientific advancements, would offer the most comprehensive solution for regions impacted by drought. Also, a successful measure will require bipartisan support in order to pass both the House of Representatives and the Senate and ultimately secure the President's signature. Currently, the only bill to successfully secure passage in either house is H.R. 2898 (Valadao), which passed the House of Representatives on July 16, 2015. Other bills have yet to be scheduled for mark-up.

In December 2014, the Board adopted a set of legislative priorities ([Attachment 1](#) and [Attachment 2](#)), including a priority related to the drought, which reads as follows: "Support administrative or legislative actions to respond

to drought, including funding for immediate water supply improvements, while maintaining environmental protections.” In order to encourage the development of a successful, comprehensive drought relief package, staff recommends the Board augment its current 2015/16 Legislative Priorities with the following additional drought priorities:

Federal drought legislation should specifically:

1. **Reflect broad, bipartisan agreement:** Metropolitan urges federal leaders to identify and adopt legislation that can pass Congress and secure a signature from the President. This priority is not born of policy, but of the reality that divided federal leadership requires all stakeholders to identify policy that can win bipartisan agreement broad enough for legislation to have any chance of success.
2. **Provide funding and regulatory assistance for regions affected by the drought for both immediate and long-term water projects that aid in the development, storage, treatment and delivery of water:** Immediate attention should be given to projects that can help communities respond to the current drought crisis, but only long-term planning and projects that make our water supply more resilient and reliable will prepare California for climate change and future droughts.
3. **Provide funding and regulatory incentives for conservation and water use efficiency measures:** Consistent with 2003 board-adopted principles on Water Conservation, this legislative priority urges passage of legislation that could provide direct funding and regulatory incentives to support urban retrofit actions and efficiency programs that reduce water use. Other than water transfers, conservation and water use efficiency are the most immediate actions water agencies can take to balance reduced water supplies with demands. By investing in demand reductions, agencies like Metropolitan can further improve its ability to maintain limited water reserves in storage, extending the region’s ability to withstand prolonged drought. The increased media attention and public awareness of the need to conserve during a drought also provides agencies with the opportunity to successfully change behaviors and encourage conservation as a way of life. This helps Metropolitan attain its goal of reduced per capita water use and attain compliance with state mandated reductions of 20% by 2020.
4. **Protect State Water Project (SWP) and local water supplies and ensure SWP and local water supply reliability.** On average, the SWP supplies more than 50 percent of the water that Metropolitan provides to its customers in Southern California, and makes up fully one-third of the water supply for the entire region. In recent years, both the quality and the quantity of SWP supplies have eroded due to various conflicts and conditions in the Sacramento-San Joaquin Delta. Federal Central Valley Project water supplies have been similarly impacted. California is suffering statewide impacts from the drought; therefore, any legislation that could yield additional supplies merits consideration. However, as agencies seek to improve their water supplies, Metropolitan should guard against legislative policies that shift impacts or liabilities to the SWP. While Metropolitan plans to meet all future growth in water demands through investments in conservation and local supply development rather than increase imported supplies, protecting SWP and local supplies and reliability continue to be critical priorities for the region.
5. **Provide funding and regulatory incentives for conservation projects that increase the reliability of Colorado River water supplies to all users.** With the Colorado River currently in its 15th year of drought and Lake Mead at record low levels, Metropolitan has been working with other urban entities in the Colorado River basin and the Bureau of Reclamation to implement conservation measures to increase water levels in Colorado River reservoirs. Additional funding and incentives to help this program and others like it are needed to help ensure long-term sustainable supplies in the Colorado River basin.
6. **Work within the current federal and state Endangered Species Acts to increase operational flexibility while not weakening protections for listed species:** Metropolitan urges adoption of legislation that will help facilitate water transfers and maximize SWP deliveries without weakening measures adopted under federal and state environmental laws like the ESA that protect listed species and their critical habitat. Metropolitan believes that by using an adaptive and collaborative science-based approach, under current existing laws, improvements can be made to water supply operations and existing biological restrictions that would not only enhance conditions for species but would also provide water supply benefits.

7. ***Provide direction and funding to improve information about listed fish and wildlife species and water project operations in the Delta, including data collection, scientific understanding, and real-time monitoring of listed Delta species:*** Metropolitan supports increased funding for unbiased, sound science and research to improve species recovery efforts and further California's co-equal goals of improved ecosystem health and improved water supply reliability as authorized by California's Sacramento-San Joaquin Delta Reform Act of 2009. Metropolitan urges adoption of legislation that would enhance the knowledge base on listed Delta species. Improved understanding of listed species would allow regulatory protections to be maintained or enhanced and could improve water supplies or supply reliability. For instance, real-time monitoring could allow for more flexible SWP operations that improve water supplies while meeting ESA regulatory standards. Improved understanding of listed Delta species and water project operations can reveal opportunities for improved implementation of existing regulatory standards, or new alternatives to achieve the same or better protections while improving water supplies. Should California experience heavy rainfall early this winter, enhanced monitoring and operations may enable the SWP to capture water that would otherwise be lost, helping offset future dry months. Additionally, better data may also allow project operators to temporarily suspend pumping for greater protection of Delta species to avoid "take" issues.
8. ***Encourage use of the most current scientific data and analysis to provide enhanced flexibility for water project operations:*** Water project operations are too important, especially during a drought, to not be based on the most up-to-date scientific understanding of climate change, hydrology, and fish behavior and the effect of project operations on species survival and abundance. This principle bridges the potential gap between improved scientific understanding, policy, and implementation of operational measures that are at least as protective as existing regulations while improving water supplies.

Staff recommends that the Board adopt these additional drought priorities, which, in their breadth and the urgency of the situation, demonstrate the need for comprehensive drought legislation rather than piecemeal, single-issue bills. As multiple federal bills related to the drought advance, these additional priorities will help Metropolitan articulate its policy goals and offer both support and guidance to Congress and the Obama Administration as they negotiate solutions to California's water supply challenges.

Staff will return to the Board for discussion and formal action on drought legislation.

Policy

Supports Metropolitan's mission and reflects its overall water supply reliability and Bay-Delta objectives

Legislative Priorities for 2015/16, Minute Item 49980, dated December 9, 2014

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guide lines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guide lines).

The CEQA determination is: Determine that the proposed action is not defined as a project under CEQA and is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Adopt the proposed federal drought legislative priorities.

Fiscal Impact: Unknown

Business Analysis: If successful, new federal drought legislation could potentially provide short-term and long-term benefits to operations for current and future drought.

Option #2

Do not adopt additional federal drought legislative priorities.

Fiscal Impact: Unknown

Business Analysis: Not applicable

Staff Recommendation

Option #1

Dee Zinke
Deputy General Manager, External Affairs

8/18/2015
Date



Jeffrey Kightlinger
General Manager

8/18/2015
Date

**Attachment 1 – Board Letter on Legislative Priorities for 2015/16, Item 8-3,
dated December 9, 2014**

**Attachment 2 – Amendment to Legislative Priorities for 2015/16, Item 8-3,
dated December 9, 2014**

Ref# ea12638666



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

BOARD ACTION

• **Board of Directors** ***Communications and Legislation Committee***

12/9/2014 Board Meeting

8-3

Subject

Adopt Legislative Priorities for 2015/16

Executive Summary

This board letter outlines the state and federal 2015/16 legislative priorities recommended by staff for the Board's consideration and adoption.

Details

After consulting with Metropolitan member agencies in October 2014 and the Board Communications and Legislation Committee in November 2014, the following federal and state legislative priorities are submitted for your consideration and approval. The priorities for 2015/16 support Metropolitan's mission and incorporate its overall water supply reliability and water quality objectives.

Federal Legislative Priorities

Bay-Delta and State Water Project Improvements

- Support administrative or legislative action and funding to keep the Bay Delta Conservation Plan (BDCP) on schedule to advance conveyance and ecosystem improvements to meet the coequal goals of water supply reliability and Delta ecosystem restoration.
- Support administrative or legislative action and funding to advance emergency response and near-term Delta improvements, consistent with coequal goals.

Colorado River Initiatives

- Support continued funding authorization and coordination between states for continued implementation of the Lower Colorado River Multi-Species Conservation Plan.
- Encourage coordination between federal and state agencies to implement the Quantification Settlement Agreement.
- Promote continued funding and coordination between states for the Colorado River Basin Salinity Control Program under the Departments of Agriculture and Interior.
- Protect and preserve Metropolitan's interest in water conservation programs enabled by the Water Treaty between the United States and Mexico.

Drought Related Legislation

- Support administrative or legislative actions to respond to drought, including funding for immediate water supply improvements, while maintaining environmental protections.

Regional Water Resource Management

- Support legislation authorizing the U.S. Environmental Protection Agency (EPA) to provide grant funding for programs such as the Water Research Foundation to conduct research enabling water agencies to adapt to hydrologic changes.
- Support legislation authorizing EPA's *WaterSense* program and other federal incentive programs that promote water use efficiency and energy efficiency.

Water Quality

- Support local jurisdictions' continued use and storage of chlorine gas as treatment disinfectant. Support authorizing EPA oversight of water system security through updated vulnerability assessments and site security plans.
- Support legislation, initiatives and funding to protect and improve water quality from various constituents, including but not limited to chromium 6, nitrate, perchlorate, salinity, uranium, various fuels and their additives, pharmaceuticals/personal care products, and other constituents of emerging concern.
- Support policies and administrative or legislative actions that protect surface water and groundwater supplies from energy development activities that may impair water resources. Covered energy development activities include, but are not limited to, enhanced oil and gas recovery techniques such as hydraulic fracturing.

Cybersecurity

- Support national associations' and coalitions' efforts to develop standard guidance and best management practices for consistent and ongoing actions to reduce vulnerabilities in process control systems for major water system providers.

Environmental Planning and Environmental Compliance

- Support administrative or legislative actions to improve clarity and workability of the National Environmental Policy Act (NEPA), and eliminate duplicative NEPA and state California Environmental Quality Act (CEQA) processes.
- Support administrative or legislative actions for environmental compliance (e.g., air, water, hazardous materials and waste) that provide for regulatory compliance flexibility, promote consistency and reduce regulatory duplication.
- Support administrative or legislative actions, including those related to the California Desert Wilderness Protection Act, to ensure the reliability and continuity of Metropolitan's system operations and real estate assets, including rights of way necessary to access Metropolitan's facilities.
- Support administrative or legislative actions, including those that address EPA's proposals related to the Clean Water Act definition of "waters of the United States," to ensure reliability and continuity of Metropolitan's water transfers, and water supply facilities and infrastructure.
- Support administrative or legislative actions to consolidate the review and oversight of anadromous species protection under the Department of Interior to eliminate duplication and increase efficiencies

Invasive Species

- Support administrative or legislative actions and funding for biological controls, mitigation management, and elimination of invasive species, including, but not limited to, quagga mussels and striped bass.
- Support administrative or legislative actions pertaining to invasive species that are consistent with, and in no way interfere with, existing interstate water transfers.

Energy Sustainability

- Encourage coordination to implement federal law that is consistent with Metropolitan's long-term contract for hydropower generated at Hoover Dam for the benefit of Arizona, Southern California and Nevada water users that rely on Hoover power to minimize costs to consumers.
- Support authorization for grant funding for energy efficiency, including programs to reduce greenhouse gases and develop renewable resources.
- Promote water/energy nexus legislative or regulatory activities that preserve Metropolitan's ability to pursue a wide variety of supply options and oppose constraints on supply development such as water resource loading orders based on energy intensity. Support legislation that provides renewable energy credits for both small and large hydroelectric facilities, irrespective of the facility's nameplate generating capacity.

Infrastructure and Public Finance

- Support measures to reduce the cost of financing water infrastructure planning and construction, such as tax-credit financing, tax-exempt municipal bonds, an expanded Water Infrastructure Finance Innovation

Act, or similar financing mechanism that funds new water supply infrastructure, including water conduits, pipelines, canals, pumping, power and associated facilities, the Environmental Infrastructure Accounts and other funding mechanisms.

- Support Bureau of Reclamation's Title XVI and WaterSMART programs.
- Monitor pension reform and Other Post-Employment Benefit proposals.

Appropriations Priorities

- BDCP planning and implementation funding for near-term projects, including near-term and emergency response projects.
- Farm Bill/USDA programs to support habitat projects in the Delta and agricultural water use efficiency projects in the Delta or in the Colorado River basin.
- Colorado River Basin Salinity Control Program.
- Colorado River drought resiliency projects.
- Water quality protection initiatives (e.g., chromium 6, nitrate, perchlorate, salinity, uranium, pharmaceuticals, personal care products, etc.).
- Biological controls, mitigation management and elimination of invasive species.
- Solar retrofits and other renewable energy and conservation projects.
- Water conservation and water use efficiency programs and water resource projects.
- Desalination and salinity management research, including funding for the Brackish Groundwater National Desalination Research Facility through the Desalination Reauthorization Act of 1996.
- Lower Colorado River Multi-Species Conservation Plan.
- Bureau of Reclamation Title XVI program.
- Climate change adaptation and mitigation research.

State Legislative Priorities

Bay-Delta and State Water Project Improvements

- Support administrative or legislative action and funding to keep the BDCP on schedule to advance conveyance and ecosystem improvements to meet the coequal goals of water supply reliability and Delta ecosystem restoration.
- Support administrative or legislative action and funding to advance emergency response, near-term Delta improvements and expenditures to support fish monitoring activities in the Delta consistent with coequal goals.
- Continue support for implementation of state policies adopted as part of the 2009 Delta Reform Act and water management package, including clarification of the monitoring and enforcement provisions related to in-Delta diversions.
- Support state funding for public share of Delta ecosystem restoration costs.
- Support administrative or legislative action to add storage statewide and to remove existing prohibition for state funding to raise Shasta Dam.
- Oppose administrative or legislative action that would unfairly shift procurement of renewable resources to the State Water Project, irrespective of transmission limitations, cost and portfolio availability.

California Water Action Plan

- Support implementation of the Brown Administration's comprehensive water strategy, consistent with Metropolitan's goals and objectives, to ensure effective drought management and near-term actions to guide development of programs and investments to meet the state's long-term water infrastructure needs.

Colorado River Initiatives

- Encourage coordination between federal and state agencies to implement the Quantification Settlement Agreement.

Regional Water Resources Management/Foundational Actions

- Support effective administrative solutions to improve the permitting process for proposed seawater desalination projects in California while complying with all existing environmental regulations, as initiated by AB 2595 (Hall, 2012).
- Support administrative or legislative action to promote recycled water as a water resource, without compromising the operational, financial, water quality, regulatory and customer interests of Metropolitan and other drinking water agencies.

Groundwater Management

- Monitor implementation of the 2014 Sustainable Groundwater Management Act, including subsequent legislation to address expedited adjudications and designation of groundwater recharge as a beneficial use.

Environmental Planning

- Support administrative or legislative action to improve clarity and workability of CEQA.
- Support administrative or legislative action for environmental compliance (e.g., air, water, hazardous materials and waste) that provide for regulatory compliance flexibility, promote consistency and reduce regulatory duplication.

Invasive Species

- Support administrative or legislative actions and funding for biological control, mitigation management and elimination of invasive species, including, but not limited to, quagga mussels and striped bass.

Energy Sustainability

- Support expanding definition to qualify state and local hydropower generation as renewable resource.
- Pursue allocation of Cap-and-Trade auction revenues or free allowances from the California Air Resources Board or other administering agencies for Metropolitan and Department of Water Resources/State Water Project, to be used for greenhouse gas reduction measures and related projects.
- Promote water/energy nexus legislative or regulatory activities that preserve the Metropolitan's ability to pursue a wide variety of supply options and oppose constraints on supply development such as water resource loading orders based on energy intensity.
- Continue to support and promote integrated water resources portfolio planning.

Water Quality

- Support local jurisdictions' continued use and storage of chlorine gas as a treatment disinfectant.
- Support legislation, initiatives and funding to protect and improve water quality from various constituents, including, but not limited to, chromium 6, nitrate, perchlorate, salinity, uranium, various fuels and their additives, pharmaceuticals/personal care products, and other constituents of emerging concern.
- Support policies and regulations or legislation to protect surface water and groundwater supplies from energy development and other activities that may impair water resources. Covered energy development activities include, but are not limited to, enhanced oil and gas recovery techniques such as hydraulic fracturing.

Infrastructure and Public Finance

- Support "beneficiaries pay" approach as financing mechanism for statewide projects and programs.
- Oppose de facto taxes levied solely on water agencies for funding broader public benefits.
- Monitor implementation of 2012 pension reform legislation and Other Post-Employment Benefits reform initiatives for potential impacts on Metropolitan's long-term liability.
- Support legislation or administrative action that deters metal theft and protects critical public water infrastructure.
- Monitor implementation of the 2014 water bond, Proposition 1, and influence how water bond dollars are spent, both through program development — including regulations and guidelines at the agency and department level — and through the appropriation of bond funds through the state budget process.

Policy

Supports Metropolitan's mission and incorporates its overall water quality and supply reliability objectives.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt, and adopt the Legislative Strategy for 2015/16.

Fiscal Impact: None

Option #2


Take no action.

Fiscal Impact: None

Staff Recommendation

Option #1


Dee Zinke
Deputy General Manager, External Affairs
12/1/2014
Date


Jeffrey Kighllinger
General Manager
12/1/2014
Date

*From Communications and Legislation Committee***OTHER BOARD ITEMS - ACTION**

- 8-3** At the Communications and Legislation Committee meeting on December 8, 2014, the Communications and Legislation Committee voted to adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt, and to adopt the Legislative Strategy for 2015/16 as amended in committee pursuant to a request by Director McKenney to add the phrase "from unacceptable risks" to the second bullet item in the Water Quality section for both federal and state legislative priorities, so that it reads: Support legislation, initiatives and funding to protect and improve water quality from unacceptable risks from various constituents, including but not limited to chromium 6, nitrate, perchlorate, salinity, uranium, various fuels and their additives, pharmaceuticals/personal care products, and other constituents of emerging concern.

With this amended language, the Board approved Option #1, to adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt, and adopt the Legislative Strategy for 2015/16.



- **Board of Directors**
Communications and Legislation Committee

9/22/2015 Board Meeting

8-5

Subject

Express support and seek amendments to S. 1894 (Feinstein, D-CA) – California Emergency Drought Relief Act of 2015

Executive Summary

S. 1894, the "California Emergency Drought Relief Act of 2015" was introduced on July 29, 2015 ([Attachment 1](#)) by Senator Feinstein and cosponsored by Senator Boxer. S. 1894 seeks to alleviate the impacts of the drought in California by: (1) directing federal agencies to use their authority and discretion under existing laws and regulations to improve water supply conditions through operational flexibility measures; (2) providing direction and funding for actions to benefit fish and refuges; (3) providing financial assistance for water supply, water conservation, and drought-alleviation projects; and (4) authorizing new programs and creating new financing and funding programs. Altogether, S. 1894 authorizes over \$1.2 billion in appropriations over the next 10 years and directs spending of three times that amount between 2026 and 2050.

Details

Background

S. 1894 utilizes language from legislation introduced by Senator Feinstein in 2014 (S. 2016 and S. 2198), but has an expanded scope with provisions similar to other legislation introduced by other members of the California delegation in 2015. The author states that the goals of the legislation are "moving and creating water long-term to help those communities suffering the worst effects of the drought, while remaining completely compliant with environmental laws such as the *Endangered Species Act* and *Clean Water Act* as well as all biological opinions." Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski has announced that S. 1894 and other drought-related legislation will be heard at an October meeting of that committee.

Measures to Take Advantage of Operational Flexibility under Existing Law

Title 1 contains a number of actions that the Secretaries of Interior and Commerce are directed to take during the drought emergency or until September 30, 2017, whichever is later. Many provisions are similar to S. 2198 introduced by Senator Feinstein last year. For example, the Secretaries of Interior and Commerce are directed to "provide the maximum quantity of water supplies possible" to the water projects and "any other locality or municipality in the state." Title 1 contains provisions directing the Secretaries to act, including that the Secretaries ensure the Delta Cross Channel Gates remain open to the greatest extent possible; that they manage reverse flow in Old and Middle Rivers (OMR) to minimize water supply reductions to the projects (but as prescribed by the biological opinions); adopt a 1:1 inflow to export ratio for new transfer water during the spring; issue permits within the shortest practicable time period for temporary barriers or operable gates and for decisions on water transfers; have the National Academy of Sciences conduct a study on the effectiveness of saltcedar biological control efforts; and "use all available scientific tools to identify any changes to real-time operations" of water projects that could result in the availability of additional water supplies.

Actions to Benefit Fish and Refuges

S. 1894 authorizes nearly \$60 million over five years to benefit listed fish species. The bill contains direction and authorizes appropriations for various actions to benefit listed fish species. In general, the authorizations are through 2020. It begins by authorizing funding for projects to recover listed salmonids, along with direction for federal agencies to expedite federal reviews and approvals of individual projects. Other projects include reports on the use of non-physical barriers; reports on adding gravel and other ways to restore additional salmonid rearing areas along with direction to implement restoration if it is feasible; a pilot program to test alternative hatchery release strategies; a pilot program to identify habitat that favors predatory fish to the detriment of sensitive native species and make recommendations (without implementation) of how to modify that habitat to reduce predation; and an assessment of whether reduced lighting at artificial structures would reduce predation and direction to implement recommendations. Other projects include evaluating and improving delta pump salvage systems; creating a pilot program to increase salmonid survival through the Delta using a trap and barge program for San Joaquin origin fish; and improved temperature modeling.

Financial Assistance for Water Supply and Demand-Management Projects

The bill also authorizes substantial financial assistance through a variety of federal programs for water supply, water conservation and water use efficiency projects, including desalination, storage, and recycling projects; emergency projects to provide drinking water to areas where water shortages pose a risk to public health and safety; on-farm water conservation actions; combating water theft for illegal marijuana cultivation; innovative water supply and conservation technologies; and establishing an open water data system within the United States Geological Survey to improve access to and exchange of water data and information for water management, education, research, assessment, and monitoring purposes.

New Programs and Authorizations

S. 1894 provides direction to existing programs to expedite drought relief and authorizes a number of new programs. Most notably, the bill authorizes the U.S. Bureau of Reclamation (Reclamation), without further Congressional approval, to partner in both federally owned and non-federal storage projects. This sea-change in federal policy would allow Reclamation's expertise to be shared more widely and could give more local control for projects, such as Sites Reservoir. The bill also calls for feasibility studies authorized under CalFed to be completed. In addition S. 1894 makes amendments to the Safety of Dams Act to allow increased reservoir capacity as part of a dam safety project. The bill also directs the Army Corps to identify and carry out five pilot projects to update operation manuals at federal and non-federal dams in states with a drought declaration.

Also of note, S. 1894 creates the Reclamation Infrastructure Finance and Innovation (RIFIA) Act. Similar to Transportation Infrastructure Financing and Innovation Act for transportation projects and Water Infrastructure Financing and Innovation Act (WIFIA) (authorized by WRDA) for certain water projects, RIFIA is a program to provide secured loans or loan guarantees for various infrastructure projects, but would be limited to water-related projects in the Reclamation states. Other provisions include authorizing the Secretary to designate, subject to certain conditions, the state as lead agency for the purposes of National Environmental Policy Act (NEPA), which could expedite environmental review for state drought projects that also trigger NEPA review. Similar to WIFIA, projects that use tax-free municipal financing may not be eligible for RIFIA funding.

Among other changes, S. 1894 would also amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 USC 390h), known as Title XVI, by adding a competitive grant program and authorizing \$200 million through 2020.

Impacts of the Legislation upon Metropolitan

Assuming that federal regulatory officials diligently exercise their discretion under existing law to use the flexibility inherent in the biological opinions, the operational flexibility measures in the bill, particularly the 1:1 San Joaquin River Inflow to Export ratio for water transfers and exchanges, the use of turbidity triggers, application of the OMR criteria to minimize water supply impacts, revised Delta Cross Channel operations, and use of temporary barriers and operable gates in the Delta could provide both water supply and water quality benefits to Metropolitan. The actions to benefit species in the bill are unlikely to create short-term water supply

relief, but in the long run will improve information about listed species. Substantial funding for water supply and demand-management projects will facilitate Southern California's ability to respond to the next drought and may provide some short-term relief to areas of the state at risk of facing an inadequate supply of water. Moreover, S. 1894 could assist or accelerate additional new storage, which could make Central Valley Project-State Water Project (SWP) coordinated operations more flexible in the future, increasing water yields of both projects relative to the current system and regulatory constraints.

Suggested Metropolitan Position and Response

Metropolitan adopted priorities for federal drought legislation in August 2015. S. 1894 represents legislative progress on many of those priorities. S. 1894 is an expansive bill that provides funding and regulatory assistance for regions affected by drought for both immediate and long-term water projects that aid in the development, storage, treatment and delivery of water. The bill provides funding and regulatory incentives for conservation and water use efficiency measures. S. 1894 could help protect reliability for the SWP, Colorado River and local water supplies. The bill also works within the current federal and state Endangered Species Acts to increase operational flexibility while not weakening protections for listed species. The bill additionally provides direction and funding to improve information about listed fish and wildlife species and water project operations in the Delta, while also encouraging the most current scientific data and analysis to provide enhanced flexibility for water project operations. It is unclear the degree the bill will secure broad, bipartisan support, but it has been set for a hearing by the Republican Chair of the Senate Energy and Natural Resources Committee, and could potentially win broad support there.

Staff recommends that the Board authorize the General Manager to express a support and seek amendment position for S. 1894. If the Board approves, the General Manager would send a letter stating the Board's position on S. 1894, listing the Board's federal drought legislative priorities as adopted August 18, 2015 and urging that the final drought bill be amended to represent those priorities

Suggested Amendments

In addition to technical amendments, staff would seek a number of amendments to S. 1894 that relate to four important Metropolitan interests.

- First, the bill contains protections for SWP contractors against redirected impacts of federal actions, but also contains a loophole from those protections. Staff recommends providing language to close that loophole.
- Second, S. 1894 amends the Reclamation Safety of Dams Act of 1978 to allow additional project benefits (such as increasing storage) to be approved concurrent with Safety of Dams projects. While this language is much better at protecting SWP water supplies than other language we have seen in House of Representative bills, staff recommends that to protect SWP interests in San Luis Reservoir provisions be added to retain cost allocations under existing law.
- Third, S. 1894 amends the Water Desalination Act of 1996 to prioritize projects that "reduce reliance on imported water supplies that have an impact" on listed species. The term "reduced reliance," is not defined in federal or state law, and is the source of diametrically opposed state law interpretations that are the basis of claims in the *Delta Stewardship Council Cases*. Staff recommends the term and associated language addressing limitations on imports be removed to reduce litigation risks.
- Finally, the Collaborative Science and Adaptive Management Program (CSAMP) was started in 2013 by the federal, state, local, and Non-Governmental Organization parties to the biological opinions litigation as a means to seek improved scientific understanding of species in a way that would reduce the chance of litigation in the future. This program is working well with the exception that funding has been difficult to obtain and Reclamation has experienced serious difficulties and delays in contracting. Staff recommends that a provision be added to Title II to fix contracting issues, authorize Reclamation to contribute directly to CSAMP, and authorize \$5 million in appropriations.

Policy

Minute Item 46637, dated April 11, 2006, adopting a set of Delta policy principles ensuring a foundation for development of future positions and provide guidance to staff

Minute Item 47135, dated June 12, 2007, adopting Metropolitan's Delta Action Plan

Draft Minute Item 50217, dated August 18, 2015, adopting additional Metropolitan 2015/2016 Legislative Priorities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves organizational and administrative activities that will not result in physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(5) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Authorize the General Manager to express a support position for, and seek amendments to S. 1894.

Fiscal Impact: Unknown

Business Analysis: If passed, S. 1894 could potentially provide short-term benefits to SWP operations during the drought. If authorized funding is appropriated, it could also provide a significant amount of funding for water supply and demand-management projects that benefit Southern California.

Option #2

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

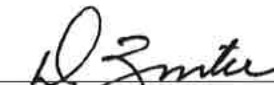
Take no position on S. 1894.

Fiscal Impact: Unknown

Business Analysis: If passed, S. 1894 could potentially provide short-term benefits to SWP operations during the drought. If authorized funding is appropriated, it could also provide a significant amount of funding for water supply and demand-management projects that benefit Southern California.

Staff Recommendation

Option #1



Dee Zinke
Deputy General Manager, External Affairs

9/16/2015
Date



Jeffrey Kighling
General Manager

9/16/2015
Date

Attachment 1 – S. 1894 introduced July 29, 2015

Ref# ea2639178

Note: Attachment filed with Electronic Copy



David Bernhardt

From: Bernhardt, David L.

Sent: Thursday, October 8, 2015 9:33 AM

To: Johnny Amaral

Subject: Fwd: POLITICO Pro Breaking News: McCarthy withdraws from speaker race, election postponed

David Bernhardt

Begin forwarded message:

From: POLITICO Pro <politicoemail@politicopro.com>

Date: October 8, 2015 at 12:31:48 PM EDT

To: <dbernhardt@BHFS.com>

Subject: POLITICO Pro Breaking News: McCarthy withdraws from speaker race, election postponed

Reply-To: POLITICO subscriptions <reply-fe8a1076746c027e7c-591782_HTML-637932022-1376319-0@politicoemail.com>

Rep. Kevin McCarthy (R-Calif.) has withdrawn from the race for House speaker and the election for the top post has been postponed.

To change your alert settings, please go to <https://www.politicopro.com/member/alerts>

This email was sent to dbernhardt@BHFS.com by: POLITICO, LLC 1000 Wilson Blvd.
Arlington, VA, 22209, USA

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From: Tom Birmingham
Sent: Saturday, October 10, 2015 2:14 PM
To: 'Bernhardt, David L.'
Subject: Please Give Me a Call

Please call me at (916) 441-1486.

From: Jason Peltier

Sent: Tuesday, October 13, 2015 6:41 AM

To: Dennis Cardoza; David Bernhardt; Denny Rehberg; Johnny Amaral; Ara Azhderian; Ed Manning; Carolyn Jensen

Subject: Poll: California's drought heavy on the mind | The Sacramento Bee

<http://www.sacbee.com/news/politics-government/field-polls/article38900478.html>

From: Dennis Nuxoll

Sent: Tuesday, October 13, 2015 9:26 AM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; 'DCardoza@foley.com'; 'Johnny Amaral'

Subject: Coordination call in the wake of Damon and Weaver taking over?

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-Dennis

Dennis Nuxoll

Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

From: Dennis Nuxoll

Sent: Tuesday, October 13, 2015 10:14 AM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; 'DCardoza@foley.com'; 'Joe Raeder'; 'Nancy Williams'

CC: 'Johnny Amaral'

Subject: FYI: Sportsman Caucus urging ENR action on drought

<http://www.trcp.org/media/press-release/congress-should-seize-opportunity-to-plan-for-future-droughts#.Vh07afVhBc>

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Email: dnuxoll@wga.com

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From: DCardoza@foley.com

Sent: Tuesday, October 13, 2015 11:26 AM

To: 'Dennis Nuxoll'; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; 'Johnny Amaral'

Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

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Sent: Tuesday, October 13, 2015 12:26 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; Cardoza, Dennis A.; 'Johnny Amaral'

Subject: Coordination call in the wake of Damon and Weaver taking over?

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From: MacMillan, Anne
Sent: Tuesday, October 13, 2015 11:27 AM
To: DCardoza@foley.com
CC: Dennis Nuxoll; Bernhardt, David L.; Johnny Amaral
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

Is that meeting with Jennifer scheduled?

Anne MacMillan
The Wonderful Company
(202) 550-8525

On Oct 13, 2015, at 11:26 AM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

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the particular matter that is the subject of this message, and may not be relied upon by any other party.

From: DCardoza@foley.com
Sent: Tuesday, October 13, 2015 11:29 AM
To: 'MacMillan, Anne'
CC: Dennis Nuxoll; Bernhardt, David L.; Johnny Amaral
Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

Left a message yesterday. I think she is in CA this week

From: MacMillan, Anne [mailto:Anne.MacMillan@wonderful.com]
Sent: Tuesday, October 13, 2015 2:27 PM
To: Cardoza, Dennis A.
Cc: Dennis Nuxoll; Bernhardt, David L.; Johnny Amaral
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

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Sent: Tuesday, October 13, 2015 12:26 PM
To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; Cardoza, Dennis A.; 'Johnny Amaral'
Subject: Coordination call in the wake of Damon and Weaver taking over?

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From: MacMillan, Anne
Sent: Tuesday, October 13, 2015 11:30 AM
To: DCardoza@foley.com
CC: Dennis Nuxoll; Bernhardt, David L.; Johnny Amaral
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

Also I am very supportive of a coordinating call. :)

Anne MacMillan
The Wonderful Company
(202) 550-8525

On Oct 13, 2015, at 11:28 AM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

Left a message yesterday. I think she is in CA this week

From: MacMillan, Anne [<mailto:Anne.MacMillan@wonderful.com>]
Sent: Tuesday, October 13, 2015 2:27 PM
To: Cardoza, Dennis A.
Cc: Dennis Nuxoll; Bernhardt, David L.; Johnny Amaral
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

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Sent: Tuesday, October 13, 2015 12:26 PM
To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; Cardoza, Dennis A.; 'Johnny Amaral'
Subject: Coordination call in the wake of Damon and Weaver taking over?

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From: Jason Peltier
Sent: Tuesday, October 13, 2015 12:34 PM
To: Ara Azhderian; [REDACTED]@[REDACTED] [REDACTED] Johnny Amaral; Dan Keppen; Cannon Michael
Subject: Fwd: Drought hearing transcript
Attachments: Western and Alaska Water Legis. Final.docx; ATT00001.htm

FYI

Begin forwarded message:

From: "Bernhardt, David L." <DBernhardt@BHFS.com>
Date: October 13, 2015 at 12:30:23 PM PDT
To: Jason Peltier <jason.peltier@sldmwa.org>, "Dennis Cardoza (dcardoza@foley.com)" <dcardoza@foley.com>
Subject: Drought hearing transcript

Jason: Per your request.

David

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Senate Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining
Full Committee Legislative Hearing on Western and Alaska Water Legislation
October 8, 2015

Murkowski: Good Morning. The committee will come to order. We've got a full house speaking about an issue this morning that I think is fair to say if you are from the West you get up every morning thinking about what is happening with water, with our drought situation, and what can be done to address some of the issues that have been longstanding in California now and the concern that it continues to grow and be an evolving threat.

Our focus this morning is on legislation which is, it's good to have this discussion before the Energy Committee. There has been much thought. There have been many oversight and reviews. I myself have been out to California a couple of times meeting with farmers, meeting with interests that are very, very concerned about how we move forward. But until you have some legislation in front of you that kind of defines what some of the proposals are, it makes it more difficult for us as a committee.

So today we're focusing on legislation. We've got a Senate bill that my colleague and friend Senator Feinstein has been working on for some time now, the California Emergency Drought Relief Act. We have the House bill that Congressman Valadao has been working on, the Western Water and American Food Security Act. Their sponsors are here along with Senator Boxer has been equally engaged on this issue on behalf of her constituents so we will hear brief comments from them this morning before we go to our panel of witnesses. Everyone, I think, in this room is aware that we have a serious, long-lasting and consequential drought.

California has imposed mandatory reductions on water use by its residents and its businesses. Many California farmers continue to face unprecedented reductions in water delivery and some communities no longer have running water. And some of the stories that we have heard really make you heartsick. This is something that must be addressed.

But this is not just about what we're seeing in California. It's a West-wide drought. It's being felt across the Colorado River Basin, up in the Pacific Northwest. Interior Alaska even was abnormally dry this summer. Dry conditions also contributed to a terrible wildfire season this year. So when we think about the impacts of drought it is more than just the water itself. It is the impacts.

So the questions we are here to discuss is: what should we do about it? What do we do about the drought? And our choices largely boil down to the measures before us today. The House and Senate bills both seek to maximize water delivery to where it is most needed in California. Both reflect some common approaches – for example, requiring agencies to use real-time monitoring to

address environmental concerns associated with increased water flows through the Bay-Delta. But I think it's important to note that the bills diverge in some important ways.

The Senate bill seeks to provide guidance to federal agencies to increase flows through the Delta, while also giving agencies flexibility to make decisions on flow levels. Its sponsors have proposed substantial increases in funding for a variety of activities, including greater storage.

As we review that approach, we need to consider the criticisms of that Senate bill, that its guidance to the agencies is perhaps insufficient, that current flexibility is not being utilized, and that it lacks necessary funding offsets.

But we also need to consider the approach that's been taken by our House colleagues. Their bill gives more direction, less flexibility to the agencies. It includes funding for storage and other activities, but is fully paid-for. And these decisions have led some to claim the House bill is overly prescriptive, is too rigid and doesn't provide sufficient funding for some key programs. So we could talk about Goldilocks here and which one is too big, too small and which one is just right, but I think it's important to acknowledge that these are very complicated, some very complex issues, and we need to reach a unified legislative response.

Also before us today is a bill from Senators Heinrich and Udall that includes some interesting provisions on water transfers and exchanges.

And then finally, we are receiving written testimony on three hydropower bills, including my measure to authorize the expansion of an existing hydro project at Terror Lake in Alaska. Right now, the area around Terror Lake is powered solely by clean, renewable hydropower and a small wind turbine. So we're in kind of an interesting situation. If we can't allow for the expansion, what we do then is we turn back to expensive diesel fuel instead.

The news across the country, and it was highlighted when President Obama was up in the state, was that we're making some remarkable headway with our microgrid systems and Kodiak is always pointed out as the second largest island in the United States of America getting to the point where they can be 100 percent on renewables. But we're going to have to go back to diesel if we can't get an expansion around Terror Lake. It's a beautiful place out there surrounded by a lot of bears and if anybody is not thinking kindly about it maybe they should go take a trip out there and take a look. I invite you to visit our bears.

What I think we want to focus specifically on here this morning is the extent of the drought that we are facing in the West, and I appreciate, a great deal, the work the sponsors of these various bills have put into where we are today.

I have asked for indulgence of my colleagues that are here to testify. We're trying to get through, again, a pretty aggressive panel with hopefully lots of questions, but I am pleased that you have joined us this morning. We'll look forward to

your comments after Senator Cantwell has provided hers, and then we will move to this very important issue. Senator Cantwell.

Cantwell: Well thank you, Madam Chair, and thank you for holding this important hearing and welcome to the Californians, that's something that my Washington doesn't always say. But I certainly appreciate Mr. Valadao. We just met this morning, but I just want everyone to know there are no more tenacious members in the United States Senate than the two women sitting next to you. So I know that they have worked very hard on this legislation, over a long period of time, and they're certainly trying to have the best interests of everybody at hand. I look forward to hearing all of your comments this morning as we try to deal with this very tough issue.

As the Chair said, communities across the West are seeing the impacts of this, not just Californians, and towns and wells have run dry. Farmers have seen billions of dollars of losses. And the ecosystem has suffered.

So, we know this, there are no easy solutions. However, one thing is clear that we cannot address the long-term impacts of this issue by fostering short-term solutions that don't help us manage the ecosystem. And the worst thing to do, obviously, is to pass legislation that ends up in the courts and allows us not to move forward on anything.

Drought will likely continue for the coming years. And short-term solutions that divide communities, threaten the environment and create greater uncertainty only make the challenge harder because we know that this situation is not going away.

There is no question that we are seeing some of the most severe droughts in history, and California is experiencing the worst drought in 500 years.

In the state of Washington, we've had record-breaking temperatures, low snowpack, catastrophic wildfires that I also know my colleagues here before us today care greatly about and farmers are facing a \$1.2 billion in crop loss this year alone. And nearly a quarter million sockeye-salmon died in the Columbia River this summer trying to reach their spawning grounds. So, over the last several months, the committee has heard a lot of ideas about how to deal with drought. And so today, we're hearing about these pieces of legislation before us that you have sponsored.

I want to make clear that the Yakima Basin hearing that we had earlier this year, Madam Chairman, on drought was kind of eye-opening, I think, for a lot of people here because it included the innovation where projects are balanced, integrated with a holistic response, where tribe, fishermen, farmers and foresters all sat before us in an agreement about how to move forward. I like this approach. I like this approach because it allows you to solve problems and stay out of courts and keep moving forward.

I want to make sure that we are developing long-term, resilient plans. And we are doing that as we continue to focus on water-sustainable communities. Also, I want to make sure that we are not pitting one community against another. I should just say that I sat and chaired the San Joaquin hearing several years ago, and so sat through the 18 years of litigation on that case and, finally, solutions of people coming together. So I know well some of the challenges that California has tried to push through in the past. My point is just this, that lengthy court battles resolve nothing.

Instead, what we need are solutions that take an integrated, basin-scale approach, take into account all the needs in the watershed, and to make sure that there are locally-driven solutions, collaborative yes, and consensus-based.

So we need to make sure that we are doing everything we can to make sure that we are protecting our environment. Clean water, healthy ecosystems, and that we are not managing the water or the ecosystem to the brink of collapse. I say this because we're reminded every day about the iconic salmon population in our state and how trading one for the other doesn't work for us. It doesn't work for fishermen.

So I want to make sure that we are not overriding considerations of the National Environmental Protection Act. Drought and management solutions should work with nature to seek and increase the best benefits for both the humans and the environment.

And lastly, I want to make sure that we are responding to drought in how we manage water, not how we make it more complicated. So I do believe in modernizing our federal approaches. I want to make sure that we are not creating uncertainty, but we're, again, locally-based solutions that incent people to work together and get the best science available, leveraging the power of innovation to help us solve this problem.

So I know that there are a lot of things that we are going to talk about today, Madam Chair, on this issue, but I hope that as we talk to the witnesses today, we'll keep these priorities in mind to make sure that we are improving our existing infrastructure, but make sure that we have nature-based solutions so that all those issues, fish, farmers, forest and, that are all working together on these solutions. Thank you.

Murkowski: Thank you, Senator Cantwell. I'm pleased to be able to welcome our colleagues to the Committee, as well as Congressmen. I appreciate you taking time from your morning to join us for this very important issue. But further to the point, for all that you have been doing for years in this arena. And we look forward to working with you as we advance these measures. So with that, Senator Feinstein, if you would like to lead off this morning with your comments. Welcome.

Feinstein: Thank you very much, Madame Chairman and Ranking Member Cantwell, and members of both parties. I'm very pleased to have this opportunity. I make this statement on behalf of my colleague on the left, Senator Boxer. We are joined at the hip on this. And I hope after you hear our testimony, you will join us in that.

I'd also like to thank Jeff Kightlinger for testifying today. Jeff is the General Manager and CEO for the Metropolitan Water District in Southern California. This is the largest municipal water provider in the nation. It's a water district that supplies drinking water to 26 cities and water districts, and it serves nearly 19 million people. Jeff is a professional, he's been at this for a long time. And, hopefully, his words will mean something to this Committee.

Let me begin with a general statement. This drought is worse than anything I have seen in my lifetime. And I am very worried about what it means for the State of California. Reports say that the Sierra Nevada snowpack, which is our major source of water, hasn't been this low in 500 years. And there is a strong belief that droughts will become chronic, and, therefore, real problems. Rural and disadvantaged communities are especially hard hit. We have subsidence of huge areas, some as, the ground is empty for as much as 60 feet. And this can become catastrophic in the event of an earthquake. As of this month, 2,400 wells are dry or soon will be. And this puts 12,000 people in jeopardy without water. Just this month, the Washington Post read about a family from Porterville reduced to bathing with donated supplies and living off bottled water. And this isn't the only one. UC Davis reported that the California economy will lose an estimated 2.7 billion in 2015, along with 18,600 jobs. That's on top of the 2.2 billion last year, and another 17,000 jobs we lost.

Over the past two years, Senator Boxer's staff and my staff have spent countless hours working out a drought bill in consultation with farmers and fishermen, cities and rural areas, environmentalists and businesses up and down the state. There is a truism, whiskey's for drinkin' and water's for fightin'. And I appreciate Senator Cantwell's comments, but there is a long history. It is very difficult in California to get a consensus on anything that's going to be meaningful. We have a bill that we believe has widespread support. The Nature Conservancy and the California Farm Bureau support the bill, as do 29 water districts and cities. I put together a packet of those letters of support that I would like to provide this Committee, if I may, Madam Chairman. Senator Boxer's and my bill has two goals. Short-term emergency relief and long-term investments. In the short-term, this means being able to move water consistent with environmental laws, to help California for the duration of the Governor's Drought Declaration of Emergency. It does this in a number of ways. It maximizes water supplies consistent with environmental law. The bill requires daily monitoring when fish are near pumps so more water can be pumped when fish are not nearby. It promotes water transfers between willing sellers and buyers. So we can move water to drought stricken communities that have been the hardest hit. It allows the delta cross-channel gates to open to the maximum extent feasible. And it manages delta turbidity to maximize water supplies while protecting fish.

We also have long-term solutions. We believe droughts in the West are likely to be chronic and more severe with population growth and climate change. California voters already provided a roadmap for how to fund these projects when they overwhelmingly approved a \$7.5 billion water bond last year. That bond includes 2.7 billion for storage and another 725 million for recycling and advanced treatment. Recognizing the limits of the federal budget, this bill reduces the federal role in water supply projects to one for support for state and local projects. The bill provides authorizations for the following: 600 million for storage projects to capture water during the wet years, to put to good use during the dry years, another 50 million in support of research to lower the cost of desalination and reduce its environmental impacts. The bill also identifies 105 local water recycling projects capable of producing 850,000 acre-feet of water and another 26 desalination projects capable of producing almost 330,000 acre-feet. To get these projects off the ground, the bill authorizes 500 million in grants, loans and loan guarantees. And the bill creates a program to shift rural and disadvantaged families from wells to more resilient systems like recycling.

This bill is not going to please everybody. There's no way to do it. But not to do anything is to run the risk of really losing the entire economic engine of California. We can't function without water. People can't live without water. And so we're now in a different climate, in a different set of circumstances, and we need to take action. I want to thank you, Madam Chairman, for working with us on our emergency bill before, and I hope you will see the projects of desalination and recycling as worthy of some federal support. I want you to know that we are searching for offsets. We understand the financial situation. And we very much hope to come up with some. So, thank you very much, everybody, for your attention and concern.

Murkowski: Thank you, Senator Feinstein. I know that we certainly will be working with you and the members of the California delegation. Senator Boxer, welcome to the Committee.

Boxer: Madam Chairman, Ranking Member Cantwell, I'm so glad you two are sitting up there because I honestly, I really do trust your judgment on a lot of these issues, and I hope you will work with us very closely, because when you talk about water, you're talking about the third rail of politics in our state. It's really true. Now I've served in the House for ten years, and I absolutely love the House. 10 years of great experience. But in the House I fought for my District, 500,000, now it's probably about 600,000 or so. And I understand that. I want to point out to you that Senator Feinstein and I represent almost 40 million people. And we hear from all of them. And they're all the stakeholders that care about every word that we say about this subject. So it's the farmers. Yes. It's the fishing industry. Yes. It's the tourist industry. Yes. It's the urban users, it's the suburban users, the rural users. They all want to have a seat at the table. And what we have tried to do in bill is just that. We do not want to reignite the water wars, because Senator Cantwell, you are right. They lead to the courthouse door. They have led to the courthouse door. And what that means is, nothing gets done. And people

suffer on all sides. So we have to do something courageous here. We have to say to all the stakeholders, let's hear you out and let's have a bill that is fair to everyone. And my guiding light on all these water bills has been that. I will not reignite the water wars. I will not turn one stakeholder against the other. Environmentalists against the farmers. That is not what I want to do. Farmers against fishermen. That is what has happened. We have to get past it. That's why I'm so proud of our bill. Because I think we really did make huge progress.

We are in a fifth year of a devastating drought. My colleague has laid it out. I won't go over it again, because we know how horrible it is out there. It's hurting everyone. All the stakeholders are bleeding, they're hurting. The farmers, the fishermen, the urban/suburban users. And, yes, some people are actually cut off from water supplies. The wildfires, it's extraordinary. It's frightening. Our first responders just put their life on the line because the conditions on the ground are such. Now, we can't get into an argument here about climate change. It's a loser. But all we want to say is, we are dealing with climate change now. And if people choose not to address it, it's your option. But today we're trying to look at water. So I hope we can do this in the face of this unprecedented drought.

I want to give a shout out to our Governor. He has really led the way by building bipartisan support. He passed a landmark water bond. Everyone came together. It promotes recycling, conservation, storage, desal. Communities are leading the way. And I am proud to tell you, Californians have risen to this occasion. They've reduced their water use by nearly 27% in August, exceeding the state's mandate for the third straight month.

So now it's time for Congress to act. And that's why I'm so proud that you are having this hearing today. And I'm very encouraged by your opening statements because we need to move forward. I want to echo what my colleague said. I have never really seen such a broad array of support for a bill. And I think, Madam Chairman and Ranking Member Cantwell, you outta a look at that. I mean, to have support from the California Farm Bureau Federation, and local water districts, and the Bay Area Council, and the Nature Conservancy. And in that book, you will see the very strong support that we have. That doesn't mean it's a perfect bill. There is no such thing. It's an imperfect bill. But it's a good bill. And what we have done is taken the best of bills that passed the House and Senate, of some of Senator Feinstein's former bills, my bills, as other House Members have the best of their bills in this bill. And it does complement the Water Bond that we passed. So, yes, we will need to have some funding, but there's funding back home, as well. This bill benefits all the stakeholders. It helps farmers without undermining fundamental environmental protections. It helps hard hit communities. It takes an all-of-the-above approach, which we always say we love. We always say we love an all-of-the-above approach. That's what we do here. We invest in conservation, water storage, recycling, desal., all of the things that we know we can do. The bill is a compromise. Madam Chair, if I could just let you know this. I have compromised on this bill. If I could write it all on my own and not talk to anyone else, it would look different. We did

compromise on this. It has the elements, as I said, of a number of proposals that I've put forward in the past, Senator Feinstein and members of the House. It's critical that we pass legislation that doesn't undermine federal and state environmental protections because, as Senator Cantwell noted, that would only threaten fragile eco-systems. And it also would put thousands of jobs at risk in our home state in recreation, in tourism, in fishing. We need a bipartisan comprehensive drought bill. We have a chance to do this right. We can pass a bill that has broad support, that unites all of our water users, that has the support of the administration and the State of California that will move our water policy into the 21st Century. That's what I am urging you to do from the bottom of my heart because this is serious. Bring us all together. This bill does it. This is a unique moment in history where we have found a bill that has this kind of broad support. So we will work with you. We want to alleviate the pain not only in our state, but across much of the West. The solutions in here are for the whole country. And I thank you so much for this opportunity.

Murkowski: Thank you, Senator Boxer. Appreciate your leadership in these issues longstanding. And we will

Boxer: Madame Chairman?

Murkowski: Pardon, yes, thank you for being here this morning and again for your good work. We'll now turn to Congressman Valadao. Welcome to the Senate side. Good morning.

Valadao: Thank you.

Murkowski: And thank you for your leadership on this issue. We've had this opportunity.

Valadao: Well, good morning, Chairwoman Murkowski, Ranking Member Cantwell and members of the Committee. I appreciate the invitation to testify before you today on my legislation – H.R. 2898. The Western Water and American Food Security Act of 2015, which passed the House of Representatives this past June.

Before we get into the details of this bill, I want to share a little bit about the area I represent. California's 21st Congressional District is unique. Located in the southern half of the Central Valley, my District spans about 160 miles from the Fresno County line to just south of Bakersfield, an agriculture powerhouse. The Central Valley produces the majority of the fruits, vegetables and nuts for the entire nation. Minority populations make up over 80% of my constituency. And our communities face many unique challenges due to our rural setting, such as a lack of health care and education. With another man-made drought evolving, the San Joaquin Valley is in danger of becoming a dustbowl unless immediate action is taken to change the policies that puts the needs of fish above the livelihood of people.

As a life-long resident of the Central Valley and as a dairy farmer in Hanford, I have witnessed first-hand the challenges faced by many residents when water

resources become scarce. Today, parts of my District are suffering from unemployment rates as high as 50%. As farmers are forced to fallow thousands of acres, the ripple effects are felt throughout the community. Workers are laid off. Families are unable to provide for their children. And while food lines continue to grow, we must import food from other countries just to meet the demand. I have seen families out of options, living in shacks along the road. It is difficult to watch my friends and neighbors, people I grew up with, suffer because of the laws passed by Congress and the method in which the federal agency has chosen to implement these laws.

The San Joaquin Valley is facing a dire situation. And the simple fact of the matter is that we, as members of Congress, need to add a little bit of common sense into the law. In an effort to throw a lifeline to California and all of the Western states during years of drought, I worked with my colleagues to act decisively. My legislation, HR 2898, the Western Water and American Food Security Act, would streamline the regulatory process, provide flexibility and improve scientific efforts to restore some water supplies, in turn, providing more economic certainty to farmers and communities in the Central Valley. Although a lack of precipitation contributes to the valley's water supply situation, problems are exacerbated by federal regulations and decisions of the federal and state managers. The dedication of vast quantities of water for the protection of endangered fish is done at a great cost to the communities in Central and Southern California. Despite this, there is no scientific indication that the condition of the very fish they are trying to protect has actually improved.

Furthermore, there may be alternative methods to protect fish from predatory species that could allow for additional water supplies to be made available to those areas most in need. My legislation would insure that the federal government decisions to protect listed species are effective and based on up-to-date science. HR 2898 also requires agencies to use the most accurate survey methods and to determine how water projects can operate to maximize water utilization and deliveries.

We all know that the government cannot make it rain. However, Congress does have the ability to expand water storage in wet times so we can get through the inevitable dry years. With more reservoirs, we can expand our water infrastructure and storage to insure a reliable water supply for the future. Dam feasibility studies that began over a decade ago are still incomplete today, costing taxpayers millions of dollars. HR 2898 improves the process to build storage on a West-wide basis through provisions modeled after the Water Resources Reform and Development Act. It makes common sense changes to the Safety in Dams Act, reducing such red tape that could prevent additional years of inaction.

This legislation is extremely measured given the carnage caused by the federal government. The language regarding California that passed the House of Representatives is very similar to the language negotiated with the Senate just last year. I believe it is reasonable to continue our dialogue from where our

conversation ended, rather than where it began. I have experienced the challenges the West faces because of this epic drought. I've seen the harm it's done to the people and jobs, and its ever-growing impact on the environment. I remain hopeful that Congress can find a solution to provide relief to all the suffering, not just in California, but for the entire West, as well as those Americans who rely on us to put food on their table. On behalf of the House of Representatives, we stand ready to work with the Committee to achieve this goal. Thank you again for your time Senator.

Murkowski: Thank you, Congressman. Appreciate you being here and really, on the House side, continuing to work these issues that have been so key. I've visited with many members over there. I think it is testimony to where we are here today discussing this particular bill that has moved through. We need to be working with our counterparts on the other side. So, thank you for your leadership with this.

Valadao: Well, thank you. I appreciate you taking so much time, especially to come out to the valley. I'd like to actually invite anyone of the members of the Committee, and even the two Senators that spoke here alongside of me, to come visit the valley. Come see some of these areas that you hear about in the news. When you hear about people having water bottles delivered to their house so they can take care of their families or bathe their children, or the shacks that they've been putting up along some of these roads. This is having a real human impact here. And it's something that I think people need to see for themselves to truly understand. So I appreciate the time that you've taken out personally for this. And I look forward to continuing to work with you.

Murkowski: Thank you. With that, we will now turn to our panel of witnesses. We have a full slate this morning. So I would ask that Mr. Connor, Mr. Kightlinger, Ms. Woolf, Mr. Keppen, Mr. Frank and Mr. Oglesby please come forward, and we'll do introductions and move to your testimony.

Good morning and welcome to all of you. Thank you for agreeing to join us here this morning to speak to the pending legislation before us, and to receive further testimony on the western-wide drought issues and the legislation that we have. We will begin this morning's panel with the Honorable Michael Connor, who is the Deputy Secretary for the U.S. Department of the Interior. After his comments, he will be followed by Mr. Jeff Kightlinger. Jeff is the General Manager for the Metropolitan Water District of Southern California. Welcome to the Committee again. We have Ms. Sarah Woolf who is the President of Water-Wise and a Partner in Clark Brothers Farming. Mr. Dan Keppen is the Executive Director of the Family Farm Alliance. Thank you for joining us. We have Mr. Richard Frank who is the Director of the California Environmental Law and Policy Center at the University of California, Davis. Thank you. And wrapping up the panel is Mr. Adrian Oglesby who is the Executive Director of the Utton Transboundary Resources Center at the University of New Mexico and he is also

Vice-Chair of the Middle Rio Grande Conservancy District. So again thank you all for the testimony that you will provide for us.

We would ask that you limit your comments this morning to about 5 minutes. Your full testimony will be included as part of the record and once each of you have concluded your remarks we will have opportunities for members of the Committee to ask questions to you. With that, Mr. Connor, if you would begin the panel this morning, welcome.

Connor: Thank you, Chairman Murkowski, Ranking Member Cantwell, Senator Franken, I appreciate the opportunity to appear again before the Committee to continue our discussion on drought measures. As I expressed in June, the administration is acutely aware of the drought-related challenges confronting families, farmers, tribes, businesses, cities, rural communities and the environment throughout the West. And we are committed to doing all we can to meet those challenges.

As detailed in my testimony, we are taking a multi-faceted approach and marshalling every resource at our disposal to assist western communities impacted by the drought. These actions include: maximizing water supplies for health and safety purposes as well as farming and other economy activities, maintaining critical environment protections for fish and wildlife and conserving stored water in the event of continued drought. It is with this backdrop that I have submitted testimony on the three drought bills before the Committee that by and large take vastly different approaches to this problem. Two of these bills in particular, HR 2898 and S.1894, stand in vivid contrast to each other. They are not just illustrative of diverse and competing concerns that have historically driven water conflicts throughout the West. They are representative of the challenge we face today in our common goal to maximize water supplies, build long-term resiliency and promote collaborative efforts that avoid pitting water users against each other.

To quickly summarize, as set forth in a July statement of Administration policy and my written testimony, the Administration strongly opposes HR 2898. There are many specific provisions which are objectionable, but in general, the bill would impede drought response efforts through measures that slow decision-making, increase the likelihood of divisive litigation, mandate infeasible outcomes and limit the real-time operational flexibility that is critical to maximizing water delivery. With respect to S.1894, there are numerous provisions in the bill that we do support while others that cause concern or need addition clarification or technology edits. We are grateful for the many months of dedicated work on the part of Senator Feinstein and her staff to craft and refine S.1894.

In general, we do remain concerned about provisions that could be the basis for new litigation regarding operational decisions intended to maximize water supply. At the same time, we appreciate the comprehensive approach in S.1894 that is

intended to address the need for conservation, habitat improvements, new water supplies and creative financing mechanisms to support all of those approaches.

S.1894 most closely tracks with the Administration's ongoing efforts to address the short-term crisis of drought as well as developing the broad array of tools needed to build resiliency in the face of climate change. With respect to the third water bill, I would note that until this year, drought has been affecting New Mexico almost to the extent similar to California. This year has provided some relief but water supplies, particularly in the Rio Grande Basin, are still well below normal. The Department supports the goals in many provisions of the New Mexico Drought Preparedness Act. We do, however, have some concerns about some of the introduced language in the bill that are detailed in my written statement.

In closing, I'd want to stress that the ongoing drought, particularly in California, has greatly limited water supply. By some metrics, look at snowpack, soil moisture, groundwater depth in some areas, this may be the worst drought in at least 500 years. No legislation is going to greatly increase water supply in the short-term. And to the extent it could provide some modest increase, the additional supply to one user is likely to come at the expense of some other water user or an already overstressed environment. Nonetheless, the Administration's extensive administrative and operational actions are proving that significant progress on drought can be made within the law. This is true if those actions are carried out in close collaboration with the state, affected water users and other interested parties.

We have been impressed with the level of cooperation and agreements that have been reached this year, even in the stress of the worst drought in recent times. Looking ahead, it is imperative that the federal government, state tribes and local communities think beyond the scope and scale of the current drought and plan for the needs of the future in a changing climate. Several of the provisions of the bill before the Committee today, will help us do just that. We are ready to work with the Committee to find common ground on legislation that can complement the Administration's efforts to assist communities affected by drought, both now and in the future. I stand ready to answer questions at the appropriate time. Thank you.

Murkowski: Thank you, Secretary Connor. Mr. Kightlinger, welcome.

Kightlinger: Thank you much Chairman Murkowski, Ranking Member Cantwell, members. As noted, Jeffrey Kightlinger, Metropolitan Water District of Southern California, we are the largest municipal water agency in the U.S. We supply water to one in every two Californians, 19 million people across Southern California. That works out to about two million acre-feet of water a year, two billion gallons of water every single day, on average. We get, that results in about 50% of all of Southern California's water. We get that water from two main sources: the Colorado River

and Northern California through long aqueducts that supply that water to Southern California.

As noted by many of the speakers, it's not just California that's in drought. We are in the midst of a cataclysmic drought in California. The last four years, driest period in 500 or 1,200 years, depending on which tree rings you're looking at. But the seven of the last eight years have been drought in California. Four of the last six years have been declared by our Governors to be emergency droughts over the last six years. So, incredible drought in California. But it's a West-wide drought. The Colorado River Basin has been in drought since 2000. So, we are very concerned about the future of this area and we do greatly appreciate this Committee taking the time to look at the issue and we certainly appreciate the efforts of Senators Feinstein and Boxer to introduce legislation. What we particularly liked about both bills, both the Senator's bill and Congressman's bill, is that it focuses on two things, both short-term flexibility, as well as some long-term improvements.

Short-term flexibility is critical. Metropolitan keyed a whole group, a whole suite of scientific efforts to focus on real-time monitoring, the use of turbidity as a measure in which to substitute for smelt tracking. We believed in this process, we had a number of scientists work on it. We engaged with the fishery agencies and the regulatory agencies to do that. We did not do a good job in 2013 and 14. And we probably lost 800,000 acre-feet by storms that we didn't, weren't able to move that water. That resulted in taking a bleak year into a cataclysmic drought year. To their credit, the regulatory agencies didn't want to repeat what we experienced in '13, '14, they worked hard to come up with how to use this real-time monitoring and adaptive science and we used as well as we possibly could, 2014, '15. I believe we've wrung as much water, could be possibly wrung out of the system this past year and kept a bleak year to being a bleak year. So that was as good as we could do and the agencies worked hand-in-hand with us, the water providers, to make sure we did that.

That's what a lot of the provisions in both the Congressman Valadao's and the Senator Feinstein/Boxer bill really are looking at how to do we even go further, better, faster, with that real-time monitoring, the adaptive science, and we think there is a real pathway there to do what we can. In the short-term, to increase our chances of providing more water supply. We also appreciate that the bills, talk about fast-tracking and moving on storage. Metropolitan built a two billion dollar reservoir in 2000. We have our own storage in Southern California, but for that we would have been in dramatic rationing, these past four years. But because we've had storage, we've been able to manage through and work through this drought.

The State needs more storage, we need more storage throughout California and we appreciate how both those bills are looking at that. Finally, Senator Feinstein's bill really takes a focus on recycling, reclamation, other projects. We would applaud that effort. Obviously, we know money's tight but we think those

are real critical measures that we can do. So, our board has supported the Feinstein/Boxer bill. Our board has not taken a position on the Valadao bill. But we want to work with both offices and try to come up with a compromise solution that works for all of California. So, thank you for your time, thank you for your attention to this incredible issue, and stand prepared to answer any questions that you have. Thank you.

Murkowski: Mr. Kightlinger, thank you very much, appreciate it. Ms. Woolf.

Woolf: Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and senators of the Committee. I was honored to be invited to testify today before the Committee. And I'm hopeful that my remarks can help facilitate progress on critical legislation you have before you. Because entire communities are depending upon you to find a resolution. I'm a second generation farmer. My two brothers and I grow tomatoes, garlic and onions in Fresno County. My husband, who's here with me today, is also a farmer and his family business and we both farm in Westlands Water District. While our farms rely on some seasonal employees, many of our employees are long-term and have been with us for many, many year. I know that in June you received testimony from another fellow farmer, Cannon Michael, who explained the impacts of the water crisis facing California agriculture. At that time, he discussed many of the key facts associated with water challenges facing California farmers. And he explained that 44% of California's 9.6 million acres are irrigated farmland, are receiving zero surface water. I'm one of those farmers.

Almost 75% of the state's irrigated farmland, nearly seven million acres, will receive 20% or less of this normal water supply. And 692,000 acres of farmland were fallowed in 2014. They're very significant facts for you to consider. However, I also want to bring to your attention the impacts felt by individuals who live and work in the cities and communities without water. People without jobs and business owners recognizing they potentially have no future. I fear and despair, the fear and despair in people's eyes today is real and it's heart-wrenching. Sen. Murkowski referenced it. I know this because I spend a lot of time working in those communities.

These people are Californians and they're working hard to produce the basic necessities for our country and our world. And of course for themselves. They work the land while trying to improve our schools and our communities. Many of them have come to our country recently and others for many generations before. But all with the hope of improving the lives of their families. They want the opportunities that all Americans want, an education and an opportunity for a better life. If our elected representatives are responsible for anything, it should be to provide the most basic of needs: water, access to schools and, most importantly, the ability to work. Without these basic needs residents of our communities are forced to live in tents made of pallets, behind minimarts and on the sides of railroad tracks. And stand in food lines on a weekly basis to fulfill those basic needs.

We cannot be the land of opportunity while communities lack water and residents are actually showering in church parking lots. What makes our water situation so disturbing, is that many of these negative effects have been imposed on our community, not by mother nature but as a direct result of conscious policy decisions. Before you today you're hearing HR 2898 and the Western Water American Food Security Act and Senate Bill 1894. I believe that both of these bills address our issues very well but we have to go further. We have to some legislation because we are running out of time. So that end, I want to provide some constructive suggestions.

Last year, a broad cross-section of local community leaders such as the Mayor of Fresno and growers from all over the Central Valley came together to provide a unified set of concepts that we believe would be helpful for bridging the differences between last year's bills and this year's bills. And to that extent, the same group of growers has put together a letter that I believe you received yesterday but I brought copies, again for you today. Asking for five critical points: provide congressional discretion concerning the operation of the Central Valley project and the State water project, to ensure sufficient operational flexibility, to restore water supply and, excuse me, water supply reliability. The operations of these projects must be able to capture water from the Delta during periods of higher flows and move water from north to south in a rational way. Extend the provision of any legislation for a period of time that will allow communities to establish sound, long-term water supplies for their future. Establish a process that could lead to increased storage in a reasonable timeframe. Ensure the additional burdens are not placed on the State water project as a result of congressional action. And finally, recognize the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changing conditions.

Both bills address most of these issues. But I believe the House proposal gives better direction to the agency on how they should operate the projects and is a bill, that unlike the Senate bill, offers permanent solutions. Nevertheless, we think the differences are surmountable and are interested in finding a resolution. Again, thank you all for your invitation today to testify and I'm prepared to answer any questions.

Murkowski: Thank you, Ms. Woolf. I appreciate your attention to the human aspect in very clear terms. Thank you. Mr. Keppen, welcome.

Keppen: Good morning, Madame Chair, Ranking Member Cantwell, members of the Committee. My name's Dan Keppen, and on behalf of the Family Farm Alliance I thank you for this opportunity to present this testimony today. Our organization has a long history of collaboration with constructive partners in all levels of government, with conservation and energy organizations and with Native American interests who seek real solutions to water resources challenges in the 17 western states. Policy makers and problem solvers work our members because they deal with realities of the arid west at the ground level, every day. They are

the men and women who run farms, ranches and irrigation districts. They are people for whom scarcity is a fact of life and cooperation and innovation are tools of survival.

Last summer a California farmer, Cannon Michael, represented the Alliance at this hearing and testified before this Committee, actually before this Committee on the western drought. He emphasized the drought challenges faced by him and his neighbors, like Sarah, in California Central Valley. Since Mr. Michael testified in June things have continued to worsen. However, the recommendations he provided are still relevant today. In order to respond to current and future water shortages, we believe Congress should provide federal agencies with more flexibility under existing environmental laws and regulations to encourage a cooperative approach towards achieving multiple goals. And where such flexibility currently exists in law, Congress should demand that agencies use it, promptly, and with a minimum of bureaucratic nonsense.

Time is of the essence when making water management decisions during a drought. Western drought legislation should shift the regulation of water resources away from the current adversarial structure and towards an approach that produces better results through cooperation and innovation. This includes promoting the use of new technology and water management. Real-time monitoring and data collection can be used to align water supply operations to actual fishery and environmental needs. Agencies need to address non-flow stressors in the bay-delta environment, especially non-native fish that prey on fish species protected by the Endangered Species Act.

Finally, we must invest and reinvest in a western water infrastructure necessary to meet current and future demands. Our existing water infrastructure is aging and in need of rehabilitation. We need new water storage in order to adapt to changing hydrology and develop usable and sustainable supplies to meet growing demands for water. Streamlining regulations and permitting processes can help. The federal government can continue to be a partner in solving these water problems in the West by using financial mechanisms that have very low federal costs and make water resources investment more attractive and affordable for non-federal entities.

Taken together, the bills before the Committee today incorporate nearly all of these elements. And the Alliance commends the authors for their hard work and foresight. HR 2898 provides for more flexible, multi-purpose drought water management in California's Central Valley. It offers a path for water users in California and other western states towards streamlining regulatory hurdles and encouraging the development of crucial new water storage projects and it upholds and protects state-based water rights. In addition to its California Delta-focused sections, HR 2898 contains a number of provisions that would apply throughout the West. The bill would streamline permit decisions and authorize expedited procedures to make final decisions on operations and water projects that can

maximize water supplies. HR 2898 provides new authority for agencies to approve projects that normally would require congressional authorization.

It also directs the development of a drought operations plan. The Family Farm Alliance has always taken the position that the western system of prior appropriation still fundamentally works. We are pleased that the drought legislation before the Committee today includes specific provisions intended to protect water rights holders. HR 2898 is a large detailed bill that aggressively and constructively attempts to tackle the drought challenges of California's Central Valley and also provides solutions that will assist other western states. We support the intent and vast majority of the bill's provisions. The Congress and the federal government certainly cannot change the hydrology of the West. But there is a role it can play to support family farmers and ranchers. As the Committee continues its efforts to address the current drought and develop policies to improve water management in the long-term, we ask that you consider the observations and principles that are outlined in further detail in our written testimony.

The House has passed HR 2898 to address this crisis, and California's senators have introduced S.1894. However, two separate bills are of absolutely no value to a parched West. What is needed is a single bill that can be enacted by Congress and signed into law by the President. And unfortunately time is not on our side. We must all work together to ensure that western water users have every tool available to survive and recover from the current drought in the hard, dry years that the future may hold. Thank you, and I would stand for any questions you may have.

Murkowski: Thank you, Mr. Keppen. Mr. Frank, welcome.

Frank: Thank you, Chairman Murkowski, Senator Cantwell, members of the Committee. With the beginning of a new water year on October 1, California has now officially entered into its fifth year of drought, which is, as has been mentioned by other speakers, the most pronounced and protracted and severe in the State's recorded history. The good news is that the State of California, its political leaders, water managers from the federal, state, regional, local levels and 39 million Californians have done a pretty darn good job in responding to the challenges of that drought.

The, perhaps, counterintuitively, the economy of the State of California has surged and is a remarkable recovery over the same period when we have been experiencing this 5-year drought. Urban water districts are managing and handling the drought especially well due to the visionary leadership and foresight of folks like my friend and colleague, Jeff Kightlinger. California agriculture, overall, has done pretty well in the face of these drought challenges, as well. Senator Feinstein mentioned a study that had just been released by my faculty and research colleagues at the University of California, Davis, which concludes that California's \$46 billion per year agricultural industry remains robust. That's

really due to three factors primarily. An increase in the number of water transfers among the agricultural community, a transition to higher value crops in the Central Valley, primarily almonds, walnuts and grapes. And third and perhaps most importance, an increased reliance on groundwater pumping and groundwater which has replaced and offset approximately 70% of the reductions in surface water supplies from the Central Valley project and the state water project.

That's not to say that there is no losers in this drought, as has been mentioned. Some small rural communities in the Central Valley have been hit especially hard. Some tragedies there. The biggest loser, in my view, has been the environment. The water birds that depend on the Pacific flyway and the water refuges of the Great Central Valley that are currently parched. Our native fish species in California which are in devastating crisis right now. And an unprecedented number of tinder dry forests that are erupting into wildfires, a problem which of course is not limited to California but is being experienced this year throughout the American West.

I want to spend, turn my attention and spend the rest of my time talking about some common virtues of the two bills. Several concerns I have with the House bill 2898 and why I believe the Senate bill is a preferable option. In terms of the common virtues, both bills require the preparation and completion in the very near term of feasibility studies of surface water projects and other efforts. Those projects have been discussed in the abstract for a long time, but getting down to basics and seeing if they pencil out economically and make environmental sense, is welcome.

Both bills address the particular problems of invasive and predatory species which has had a devastating economic and ecosystem effect, particularly in California's Delta. Some, but not all, of the proposed steps in the bills to expedite environmental review of proposed drought, emergency drought response efforts, similarly make sense. Let me turn to some concerns I've identified with respect to House bill 2898. At the end of the day, the bill is a straight-forward reallocation of finite surface water supplies from environmental programs to agricultural purposes. And I would submit there are three thematic deficiencies with that approach.

A better approach, it seems to me, is to expand the pie to work to create additional water supplies through recycling, reuse, desalination and conservation projects. Second, what all water users want and need, agricultural users, urban conservationists, is greater certainty, and I'm concerned that several of the proposals in the House bill would undermine that certainty and create additional litigation and uncertainty. Third and finally, and as you've heard from both federal and state water managers in the face of this drought, day-to-day, real time coordination and operation by federal and state water managers is critical. I'm concerned that some of the provisions of the House bill will undermine those collaborative and successful efforts by federal and state water managers.

Some specific concerns about the bill, legislative amendments to the biological opinions for delta smelt and salmon seem quite troublesome and set a disturbing unfortunate precedent, as do a number of the bill's proposed amendments to the Endangered Species Act specific to California, some significant undercutting of the Central Valley Project Improvement Act of 1992, one of the most significant environmental pieces of legislation, at least to Californians, in the last quarter century, and finally the repeal of federal participation in implementing the San Joaquin River settlement. I share Senator Cantwell's concerns that if that is passed the parties will return to their litigation, the foxholes, and we will have more costly, expensive, perhaps unending, litigation. By contrast, the Senate bill doesn't contain any of the specific infirmities I've identified. It does expand the water supply _____, including not just new surface storage projects, but also raising the height of existing dams and reservoirs, critically important looking at ground water storages and additional alternatives, in many cases, going to be more cost effective and can be undertaken more quickly than new surface storage projects, storm water recapture, desalination and the like. Federal support for integrative regional water management strategies and additional welcome support for federal and state water managers in California, and last and finally, and again addressing what the Senator has mentioned before, Senator Feinstein, that is, addressing the drought stricken rural communities that have paid a particular burden and are deprived of regular water sources in the drought, those folks need immediate help. And the Senate bill does that. Thank you very much for the opportunity to testify. I'd be glad to answer any questions the Committee may have.

Murkowski: Thank you, Mr. Frank. Mr. Oglesby. Your comments, please. Welcome.

Oglesby: Good morning, Madam Chair, Senator Cantwell, members of the Committee and staff. I'd like to actually start by introducing the Chairman of my Board at the Middle Rio Grande Conservancy District, Derrick Lente, and our new Chief Engineer and Chief Executive Officer, Mike Hamman. At the Middle Rio Grande Conservancy District, we irrigate approximately 65,000 acres in the middle valley, around the Albuquerque area. And, I'll start with a little bit of good news. New Mexico has emerged this year from the worst drought in history. Half of the state is considered to be out of abnormally dry conditions, although half of the state still is in abnormally dry conditions. I'm very pleased to be here talking about the New Mexico Drought Preparedness Act. And I'm very grateful to Senator Heinrich and Senator Udall for sponsoring this Bill. It has a lot of good ideas in it that we've been talking about for a long time.

The first that I'll touch upon is the Water Leasing Program. This is a voluntary program that we contemplate establishing in our District. And we have been talking about this for about fifteen years in our valley, and, to be quite frank, our conservancy district has opposed a voluntary leasing program because we saw it as a capitulation to the environmental community. We now realize that we need to give our farmers every tool in the toolbox so that they can survive in times of drought. And, frankly, just times of hardship. If a farmer needs to take a year off

to take care of his sick wife, a leasing program will give him an opportunity to make something come off of his water and return to farming, rather than just sell out. And that's important to us, to keep these farms in production in the future after times of hardship.

It's also a matter of recognizing that these are private property rights, and it's not our business to tell our farmers what to do with their water. We think that they're smart enough, and we certainly respect them enough to open the door to this program. And we appreciate the help that this bill gives us in terms of technical assistance and in terms of financial assistance, although we have committed to taking the lead on this program. So we're not looking for a handout, we're just looking for a little guidance, some examples from around the West, can help us move this forward.

The bill also touches upon water conservation, primarily focusing on metering. You cannot manage what you do not meter. We could be doing a lot more metering in the Middle Rio Grande and all across New Mexico. And this bill does affect all of New Mexico. Forgive me if my testimony is a little Middle Rio Grande centric.

There's are some other interesting aspects of it. We actually plan on realigning the Rio Grande itself, moving out of its existing channel where it's awfully high and we're losing a lot of water to seepage. There are sections that we need to move to lower parts of the valley. This is dramatic, but it's been done before, and we need to do it again. And we also need to do this because we have an odd situation where we have a national wildlife refuge that often is irrigating when the river right next to the refuge is dry. By doing some infrastructure changes and moving the river, we think we can help to alleviate that strange situation. And, again, the District is partnering closely with our federal agencies on this, and, in fact, we've committed half a million dollars a year of our own money to doing metering and efficiency improvement. So we're walking hand in hand with the federal government on this one.

An interesting portion of this bill is the peak flow restoration. We have heavily modified the Middle Rio Grande, and, at the top of our valley, we have Cochiti Dam. And Cochiti has stopped the spring flows from coming down. The Rio Grande is a snowmelt driven river, and those high pulse flows used to trigger the spawning of our endangered silvery minnow. And the overbank flows would reinvigorate our Bosque – that's what we call the riparian forest in New Mexico, that several endangered birds rely upon. Without those peak flows, I believe we will not be able to recover the silvery minnow, and we will lose our riparian forest, or at least the wonderful riparian forest we have today. We need to operate pulse flows out of Cochiti. We've done this for the last few years. We've seen success from this. But we need the Corps of Engineers to have a reauthorization of Cochiti Reservoir. We've been doing this under deviations, and so we're asking for five years of deviations in the future, and then a reauthorization of Cochiti. We do want to work very closely with Cochiti Pueblo and Santa Ana

Pueblo, who are directly impacted by this. And so we are walking hand in hand with them, as well. Again, our District is not just looking for a handout here. We've committed \$150,000 a year of our own money to look at the science behind these aspects.

The other very important, and, if you'll allow me just another moment, Madam Chair, a very important concept in this bill is the reservoir setting. We have seven reservoirs in our Rio Grande system, each with independent authorizations and each with specific functions. So our hands are tied in how we can coordinate the management of those reservoirs. We'd like to analyze how we can use all these reservoirs in a conjunctive way, how we can maximize and optimize the operations of these reservoirs. We think that there are opportunities that we're missing because of the federal, legal restrictions on how we operate these reservoirs. So, I'll just jump to the end and give you what I consider to be just a little bit more good news. We are working together in New Mexico. And that has not always been the case, and, I'll be honest, it's not always pretty. And it's not always fun. But we are working together, and I think we are moving away from what has been fifteen years of fish versus farmer, and are realizing that now is the time when it is the fish and the farmer versus changes in precipitation, urbanization, and so we're very pleased to see that our senators are seizing this opportunity, that we're taking advantage of the crisis of the drought so that we can survive this drought and that we can thrive through the next drought. So I thank you very much, and I look forward to our discussion.

Murkowski: Thank you, Mr. Oglesby. It's always nice to end the panel on a little bit of good news, so I appreciate you sharing that with us. You listen to the six of you and the comments on the various pieces of legislation that we have in front of us, I think it is very clear we do have a different approach that is reflected through the Senate bill and the House bill. But there are some areas of clear agreement, and I think it always good to recognize that if we're going to build the legislation that's going to be necessary to address the challenges, and I believe very firmly that we must define this legislation and work to advance it, that we've got some things that we can be building on. And, clearly, there's a role for technology to play here.

We've heard that from just about everyone. I've had an opportunity to see, at least from the agriculture perspective and visiting with some of the farmers out there, to see what they have done to cut back on their water usage. It is really quite dramatic and very, very impressive. When we think about the technologies, desalination, I think, we all recognize is going to allow for a game-changing approach to how we deal with water and water supply. Recycling – again, another area where our technologies will allow us to do more with unfortunately what we continue to see is a much less coming from Mother Nature herself. So this is an area where I would hope that we can be working to enhance.

The storage issue, I think, is again an area where we recognize that when we have the ability to provide for that storage, it allows us to make it through some of the

highs and the lows and kind of softens some of the impact at the time of shortage. So how we can work to build out that is also key.

I want to ask you, Mr. Connor, because clearly we've got some real differences. And I appreciate that – I'm pretty sure that I heard from each and every one of you that the way we're going to figure this out, in terms of legislation, is by working together, that it will require collaboration and what you have spoken to, Mr. Oglesby, about what you've seen in New Mexico can be something for us to look to. So, I've cited a couple of areas where I think we've got some room to work here. You've indicated that you are happy to be working with the bill sponsors, with the Committee, on some of the concerns that have been raised with key aspects of both bills. Can you cite to some additional areas, Mr. Connor, where we can be working together on some of the common areas? And, how we can start from a good position of agreement, rather than starting this off with arguing about what we don't like in it. Where else can we be building together?

Connor: Thank you, Madam Chair. You mentioned a couple on the expanding water supply front, which I do think are very key areas, important tools that we can apply. So I just want to double down on your indication that you thought you heard that those are areas we can work on – desalination, a new approach to storage, I think, is appropriate to look at at this point in time. So we do endorse those with respect to our testimony. Other areas – expanded reuse and conservation activities – we're strongly supportive of within those bills. The provisions that would also reflect a need to restore habitat in conjunction with those programs, I think, are very supportable.

I think where we have the most stark differences are legislatively, how do you deal with water operations? And how do you reconcile the environmental laws and our operational plans and deal with that in the context of drought?

Murkowski: So do you think that that's reconcilable? You point out that it's hard. I agree – it's hard. But can we work through this?

Connor: It's a tough area to deal with because we think, and I think you heard from Mr. Kightlinger here, and I very much agree, we've gone through a kind of evolution here over the last few years in our operations in the Bay Delta. In 2009 and 2010, when we were in a drought situation, we were litigating about the biological opinions. We were not talking on a daily basis, a weekly basis, about operations. We were operating and we were preparing for depositions. It was not a good dynamic. In late 2012-2013, when we started this new drought situation, we had kind of been on the leaning side of that litigation. And we had the situation that Jeff referenced, which was loss of pumping because of locations of smelt, and under biological opinions ratcheted down. I think we did lose more water in that situation than we should have if we had been communicating and working at the data closely. I think we've come a long way in 2014 and 2015 in increasing the science, the data, that we make our decisions on, communicating

better, and, as Jeff pointed out, wringing every drop out of the system while maintaining our compliance with the environmental laws.

So my point is, we don't want to go back to a situation where we're creating opportunities to litigate. We think the House bill does that. We have some concerns with the Senate bill, which I think can be worked through on that front. And we've got to try and memorialize this process, because the biggest change has been the federal government and the state government working hand in hand on a daily basis, and then extending that with the water user community and the other folks interested in the environmental issues. How can we make sure that process continues? I think that's what we need to look at from an operational standpoint.

Murkowski: I'm going to have more questions, but I'll turn to colleagues. Senator Cantwell.

Cantwell: Well, thank you, Madam Chair. And I think, continuing on that same point, because it's so good, Mr. Connor, to hear you talk about the things that we do agree on. And I want to thank all the witnesses, because I know what a challenging situation this is for California and for the whole West in dealing with this. So the fact of expanding the pie, obviously, storage, which I do think modernization of storage is one of the biggest opportunities. We're kind of stuck in a 1960s concept of storage. And I think that the innovation that can come in new methods of storage is very, very helpful.

Definitely reuse and conservation habitat – all of those things are important. Following up on this question, because I do like many of the aspects of 1894 have the concerns that Mr. Frank mentioned and you mentioned about the House bill. It's my understanding that deliveries curtailed from the Delta Smelt biological opinion since 2000 basically – 2013 – have been curtailed, and the salmon, only accounted for less than 2% of the water restrictions. So, what I'm trying to get at here is that I think some people like to come here and promulgate this notion that this is all about the ESA when, in reality, it is about the fact that we're in a drought, and what we're going to do about it. And the fact that we want to stay out of the litigation process, because the litigation process – it might make everybody feel good to pass a bill like that. But the end result of litigation will just put us into the do nothing category, which will put us further and further behind. So, if you could comment on that – either Mr. Connor or Mr. Frank.

Connor: Absolutely. I think the litigation is a path that is never ending. I think even if it results in a decision, it results in a single decision on a single point that leaves the rest of the issues to be continually litigated. And so, from that standpoint, I do agree 100% that you want to avoid that path in whatever situation, whether it's California or whether it's New Mexico. And we're seeing progress when we do that. With respect to the Endangered Species Act, I think the 2% figure you referenced was from me in past statements and, I think, represents a little bit of bad math. But, it's 4% with respect to 2014. What we looked at was – the Bureau of Reclamation is accounting for this now. The operational adjustments

that we make during the course of a water year – what are due to general permits that we have to operate under? What are due under the biological opinions?

In 2014, we reduced pumping in a manner that amounted to about 62,000 acre feet of water under the salmon biological opinion. Those were specific reductions that we made, according to Bureau of Reclamation's calculations. That was the loss of pumping and supply to the Central Valley Project. We estimate that the Central Valley Project, I think, in 2014 pumped about half of what it normally does pump. And I think it was somewhere out in – or less than half – it was a million acre feet where it pumps typically about 2-1/2 million acre feet. Of that reduction in pumping that was lost because of hydrology because of the drought, it's about one million acre feet. That 60,000 acre feet represents about 4%. So, it's a very small

Cantwell: And the smelt?

Connor: The smelt was not a factor for reduction of pumping in 2014. In 2013, the numbers were larger. It was a little over 300,000 acre feet, and about half was due to the smelt biological and about half was due to the salmon biological opinion.

Cantwell: And do you think that 1894 has a lot of the programs that – you know, we've implemented a lot at the state level in Washington on farmers and fishermen working together. Do you think there's a lot of flexibility in 1894 or that kind of creativity?

Connor: I do think that – certainly we just are more in the cooperative efforts that we've been doing over the last few years. It's trying to convene the parties through these processes, try to adaptively manage, trying to encourage us to make sure that our decisions are transparent and are based on the best available science. Yes.

Cantwell: Well, I definitely, when it comes to federal dollars, would rather put things on the table that get people to work together than spend money defending lawsuits. So, I think it's a better use of everybody's money. Thank you.

Flake: Thank you, Madam Chair. And, well, a lot of media attention has been focused on specific worst case scenarios related to the drought. So I'm pleased that the Chair is committed to move forward on a West-wide drought bill that addresses the water needs throughout the West. And in preparation for this, and with an eye toward the present problems and the coming realities of water in the West. I sought in the last 18 months to put together a consensus of federal water policy provisions that would be beneficial to Arizona. In Arizona, we have benefited over the past several decades from many forward-looking leaders who have planned well and prepared the state well for the droughts that are here and, certainly, to come. Senator McCain and I have worked with the Governor's office, Former Senator Kyle and other stakeholders in developing a series of idea that I hope will be incorporated in the bills that we're discussing today. Several

of these ideas were built on portions of the drought bill that was passed in the Senate last year have by unanimous consent and others will expand concepts that are included in the California-focused bills that are currently before us.

We will seek to address water-intensive invasive species that plague a number of rivers in Arizona and throughout the Southwest. In addition, there are several items that will allow for target forest restoration in critical watersheds. There's also a provision for a pilot project to allow more efficient use of current water storage in reservoirs. Now, fortunately, a wet May has made the shortage declaration in this year unlikely. I think we can all agree, however, that we could well see such a declaration in the near future. And Arizona, along with the other basin states, is looking for ways to avoid that shortage declaration. Thus far, the most promising efforts have included states voluntarily leaving some of their state's water entitlement storage in the Colorado River. The number one priority in Arizona is to make sure that when Arizona or any other state voluntarily contributes their water to the health of the Colorado system, the contributed water actually stays in the system and doesn't disappear along somebody else's canals.

Now without these assurances, obviously, such preventative measures don't make sense. It would be like having a savings account and seeing your neighbor just being able to reach in and grab money from it. While not all the lower basin states are affected by the shortage declaration in the same way, I'm hopeful that we can agree on a way to insure that these voluntary contributions actually do what they're intended to do. I appreciate the attention on this issue – the entire issue of drought in the West. I look forward to process and looking for meaningful solutions. And just as a question to Secretary Connor, as I mentioned, the number one priority I've heard from Arizona is to protect the legal status of water left in Lake Mead through these voluntary arrangements that I referenced. And with the MOU that you referenced during your testimony here, on June 2nd. There is, however, some concern that the Secretary has discretion to choose to reprioritize the so-called system water created under these arrangements or agreements. What assurances do the lower basin states have that the Secretary would never agree to reprioritize system water for delivery in the same year instead of that water remaining in Lake Mead?

Connor: Thank you, Senator Flake, for the question. I think the assurances are based on the practice that has come to be the custom in the Colorado River, and we have at the Department deferred in a number of situations going back across administrations in 2007 with the Seven State Agreement that led to the record decision on coordinated operations in shortage sharing, we operate pursuant to that and have incorporated that into our decision making guidelines. So the States agreement has been a model for us to operate. And we have not since 2007, the Secretary has not exercised any discretion to unilaterally allocate any unused allocation since that time.

So as we move forward, and we very much appreciate the efforts of all the states, including Arizona, of looking at ways to create new water in Lake Mead for the

benefit of the system, not any particular state, of how we lock in that by agreement amongst the states and the federal government in operating pursuant thereof. I think those discussions are going on right now. It's the standard mode of practice that we would adhere to, and we would try and insure that – you know, it's always going to be – I can give you my word, but as of January 2017, it's not going to mean much in the basin. So it's how we lock it in through agreements that can sustain itself across administrations.

Flake: You're right. It always has been the custom that has been followed to look at the agreements that are there. But is there a severe enough level of drought somewhere in the basin that would justify, in your view, the Secretary using that discretion to remove water that has been put there for storage?

Connor: In any situation, absent an agreement, the Secretary is going to consult very closely with the seven basin states, particularly the lower basin states, in the use of any unused allocation. I think that the practice even before 2007. And so, I wouldn't speculate right now that there's a situation where I would say we would override that consultation process and move unilaterally.

Flake: Thank you, Madam Chair.

Heinrich: Thank you, Madam Chair. Mr. Oglesby, I want to touch on a couple of things. In New Mexico, as you know, we've often found that voluntary agreements and collaborative efforts are more effective at resolving these water conflicts than mandated management requirements. A great example is not in your basin but in the San Juan Basin, we have a very successful collaborative effort of federal and state, tribal governments, utilities, water users, landowners, farmers, conservations groups and others. And that collaborative group implements a recovery plan for four endangered fish in the Upper Colorado basins. Can you just talk from your perspective in the Middle Rio Grande Valley a little bit about the value of voluntary collaborative efforts as a solution to some of these direct water conflicts.

Oglesby: Certainly. And thank you, Senator Heinrich. I appreciate you using the San Juan Recovery Program as an example. I am pleased to serve on the executive committee there for a while. We actually are trying to convert our endangered species program in the Middle Rio Grande Valley into a recovery and implementation program based on the success that they have up there. We're making progress on that. I suspect in the next few years we'll be able to get there.

There are other good examples of collaboration. As you know, we in New Mexico don't like being told what to do. We're very independent people. And, so, I might raise the collaborative forest restoration program as an example. We are protecting our watersheds in cooperation with our traditional communities. With our land grants and our _____ and having good success at it. Parallel to that at the state level, we have a piece of legislation that came out of our legislature with unanimous support last year to greatly expand the amount of

forest restoration that we're doing in New Mexico. Our Governor did veto it based on some administrative concerns, but I think we can overcome that easily with some modifications to that legislation. Yes, the folks in New Mexico, we like to work together. We like to help our neighbors. But we like to do it on our own terms.

Heinrich: Thank you. I want to turn to Deputy Secretary Connor real quickly, and obviously we look forward to working with you on some of the technical concerns with the New Mexico bill. Very much appreciate your feedback on that.

I want to switch real quickly to an issue of just how we best spend what are obviously very limited taxpayer dollars in resolving some of these shortage issues. Recently the Bureau of Reclamation conducted a value planning study of the proposed diversion project on the Gila River in New Mexico. How much should we expect that the proposed diversion project would cost according to that study? What's the range that are found?

Oglesby: Reclamation has looked at that at the appraisal, which is a very preliminary level of analysis. But the range is somewhere in the neighborhood, I believe, of \$600 million to over \$1 billion for a new diversion project on the Gila River system.

Heinrich: At least in the initial report, it was, I believe, \$685 million up to \$1 billion and change. Now, of that, the available federal funds under the settlement would be about \$128 million. Is that correct?

Oglesby: Yes, under the Arizona Water Settlement Act, passed in 2004, there would be the opportunity for up to \$128 million. That was dependent – that last \$28 million was dependent upon return on investment in the Lower Basin Development Fund being at a certain level, which it has not been. So I think we're looking more at the eligibility being \$100 million, as opposed to the \$128 million figure.

Heinrich: So, if you take those figures, you take 685 up to a billion, you subtract out 100 million, we're still talking about \$500 million to almost \$900 million in costs that are not covered. Where would the balance of that funding have to come from? Would it be from state and local contributions? Or how would that...

Oglesby: Yes, enormous

Heinrich: ...be covered?

Oglesby: I think, given the federal funds available already that there is not a good expectation that there would be additional federal funds available for this project. So, yes, it would be state and local funds that would be needed to finance that particular project – the balance, as you referenced, over half a million.

Heinrich: If I remember right, last year reclamation also looked at the cost/benefit analysis of that. Did that report find that the benefits outweighed the cost for any of the proposed diversion configurations?

Oglesby: I believe that's correct. The preliminary work on feasibility did yield a questionable cost/benefit, where the costs greatly exceeded the benefits. That work would be shored up in more detail in an EIS process that's being contemplated. But that was the preliminary analysis.

Heinrich: Thank you.

Murkowski: Thank you, Senator Heinrich. I believe it was Senator Gardner that was next. I just want to make sure. Yes. Senator Gardner.

Gardner: Thank you, Madam Chair.

Murkowski: Oh, wait.

Gardner: I'm happy . . .

Murkowski: I apologize.

Gardner: Senator Daines.

Murkowski: He was first on the list. I couldn't even find him. Senator Daines, I'm sorry.

Daines: Come too early sometimes. Thank you.

Murkowski: That "1" looked like a "7".

Daines: Thank you, Madam Chair. I appreciate it.

Murkowski: I'm sorry about that.

Daines: Our witnesses today testified about the challenges associated with inadequate water management in the West. And being a Montanan, we, too, have seen the effects of drought this year. You look at the maps. Certainly what's going on in California, the Central Valley – very, very severe. That drought pattern continues up the north in Oregon, Washington. And then it really takes about the third of our northwest part of our state included in this current drought.

In June this Committee heard testimony on two bills which I've co-sponsored. One is Senate Bill 1552, the Clean Water for Rural Communities Act, and Senate Bill 1365, the Authorized Rural Water Projects Completion Act, combine these bills to facilitate water delivery to over 23,000,000 acres in Montana, and millions more acres across the West, for rural communities that don't have good access to quality water supply today.

Now, I don't have a question today, but would just like to say that if we're going to address our droughts and water supply crises West-wide, I believe these bills should be part of the solution. It solves the water challenges. It may also be part of forging a bipartisan coalition and package here to get something done. I

understand some concerns from the senators, as well as the need for an offset. Then need to be addressed. I'd like to work with the Committee and other colleagues on a path forward to these bills to insure they remain part of the solution to our Western water challenges. I yield back my time, Madam Chair.

Murkowski: Senator Gardner.

Gardner: Thank you, Madam Chair. And, thank you to the witnesses for being here today. I just wanted to talk again about Colorado's situation. By 2050, we are going to go to about 8.6 million people. And so our population will double in the state by 2050. At the same time, as our population is doubling, at least according to the 2015 Colorado Water Plan, construction of new storage capacity is the lowest it has been since the 1930s. So we know when Colorado's population is going to double by 2050 that water storage construction at the lowest it has been in several decades. And Colorado is a state where all water flows out of Colorado. No water flows into Colorado, and I have a glass that is half full here. I would blame Kansas – I don't want to impugn any of my fellow colleagues. But I think we have to do better when it comes to water storage to make the need. We're looking at 12 to 15 billion dollars' worth of infrastructure costs in Colorado to meet the median needs of this 2050 demand.

And to give you a couple of examples, one project in Colorado that was started in 2003 for additional water storage completed their need of process eleven years later in 2014, and they still have federal regulatory hurdles to clear. Northern Colorado Water District began the regulatory process for building two new reservoirs as part of the Northern Integrated Supply Project. This is a project that, if it's completed, will save tens of thousands of acres from buy up and dry up, acres of farm land from buy up and dry up in Colorado. They started this process in 2004, and they are several years away from a final decision.

Denver Water began the regulatory process for enlarging the existing gross reservoir in 2003, and they still don't have a decision. We had a hearing earlier this year with the Western Governors Association. I asked about what we could be doing to help lessen the times. They confirmed we still need regulatory streamlining and flexibility at the federal level to move forward. And so to Mr. Connor, how can we improve and what can we be doing to stop talking about the need to streamline and actually start streamlining the regulatory process?

Connor: Thank you, Senator Gardner. Two points that I would make. First of all, what we found, even on the operations side, I was talking earlier about our operations in California. But it's transcended to the permitting side of things. We have been _____ as a federal government for far too long where reclamation would move forward with project in our particular circumstances then engaged the Fish and Wildlife Service or the National Marine Fisheries Service or EPA in a serial process instead of a parallel process or a collaborative process. That definitely is a killer with respect to permitting times, because issues crop up that are not dealt

with early, designs get made, they have to be undone. It's a very inefficient process.

What we have found where we have instituted new processes, usually because of the magnitude of the issue, where we have collaborated, is that we can cut down on those issues. And we can cut down on permitting times. On September 22nd, the White House _____ issued guidance on permitting large infrastructure projects, and it's really intended to institutionalize a collaborative process and have somebody running point on those large projects. Typically, we have a lot of examples. And I would even say that the Arkansas Valley Conduit is one where we . . .

Gardner: I was going to let you off the hook on that today.

Connor: I thought I'd beat you to the punch. The permitting process was fairly efficient in that one, with respect to the _____ record decision. We got hung up on feasibility for a while. And we went back and redid that. So, my point is, on the positive side, we have more work to do in our way that we collaborate within the federal government and all our different regulatory roles to permit projects.

The second point I would just quickly make is we've got to understand sometimes what causes a delay. When you get firming projects, reclamation is responsible for the record decision, and _____ work with Northern Colorado, we move that process forward. The issues that took the longest to resolve at the end of that process were reclamation using that process to resolve issues with Grand County with respect to water quality issues and with the Colorado River District with respect to water rights issues. We could have permitted and moved forward. My sense is that they would have been a significant amount of state litigation under state law with respect to that process as opposed to us using the federal process to resolve all of the issues. Now we've got a record decision as of December of last year, Northern can move forward with the project.

Gardner: Well, I would just ask for your commitment to work with me on finding ways to continue to work through the regulatory process, the permitting process, to make sure that we can streamline this – what is, I think, taking too long. We'd love your commitment on that. Thank you.

Connor: Yes, Senator Gardner.

Gardner: And, again, the _____ Valley Conduit, we'll work on that, but it was authorized back in the 1960s, so we've got to continue to speed it up. I wanted to talk a little bit more about some drought issues on – districts and utilities in Colorado have told me, when they talk about steps they could take to transfer water through federal reclamation facilities to store and deliver emergency water supplies, they've run into a little bit of a challenge. And so one of the things I think we need to do in times of drought is having more flexibility to move and store water where it is needed most on a timely basis. But if there is a need for

water transfer using excess capacity in existing federal facilities, it can take extensive regulatory review and time consuming contracting process. And so by the time oftentimes the approval and the contracting is through, the situation has changed and the proposed water transfer is out of date. So I just wanted to know, what is the Bureau's current authority to authorize the storage and transmission of non-project water through existing reclamation facilities?

Connor: We do have broad authority to facilitate the water transfers through reclamation facilities. The Warren Act, the 1939 Reclamation Projects Act. But typically, what we – it's the decision making process underneath it that we typically have to pay the most attention to. If the issues are minimal, which in a lot of cases, they are. We do a lot of water transfers every year. It's a four to six week process. If, such as in California where there is a need for large-scale transfers on an ongoing basis. We've looked and done programmatic environmental statements, which really establish the program itself. And then we can quickly, in the subsequent years, go through and process transfer requests a lot more efficiently, given the fact that we've done on a programmatic need. Then we've got to be looking at that in places in Colorado, I assume.

Gardner: Okay. And thank you. I know I'm out of time. I've got more questions. We'll follow up through the record. Thank you.

Murkowski: Thank you, Senator Gardner. Mr. Connor, you mentioned that you have broad authority in certain areas. Do you think that the department is maximizing the existing authority that you have in certain areas? Do you believe that additional authorities would be need to address some of what we're talking about here this morning?

Connor: We do have broad authority. I think that's one that I'd like to think on and get back more detail in the record. The issue Senator Gardner raised was particularly excess capacity in our facilities and whether we're set up to really permit the use of that excess capacity and in an efficient way. I think there is a little more of looking into.

Murkowski: Well, I think it is something that we should be exploring, because if we're really going to be looking beyond the current situation in California, and, quite honestly, the current situation around the West. I think we want to be putting in place a policy that extends a lot longer than where we are in the here and now. And so, if the existing authorities are not sufficient, I think we do need to look to that. But, again, I would also challenge you to look to what you have currently and whether or not you are maximizing the use to the benefit of the users here. So, it's something that I think as we're assessing legislation, we need to be looking at what we have on our books, as well.

You mentioned the issue of permitting and streamlining, reduced delays. But one of the things, again, I have heard that we really need to be working to address is how can we provide some level of certainty to the users out there when they're

there – family farms, such as Ms. Woolf represents, whether it's the urban/suburban user – it's how we achieve this certainty.

Mr. Kightlinger, let me ask, because when we talk about some of the ideas that are out there, some of the proposals I think we recognize. At the end of the day, much of this is about competition for limited resources. And we're sitting in a situation here where federal government has a tough budget right now. One of the prime differences between the House bill and the Senate bill is funding in the Senate bill, or the authorization for funding in the Senate bill, which is currently not paid for. I appreciated Senator Feinstein's willingness to explore offsets. But that's going to be a real consideration for us.

So can you give me any suggestions here in providing assistance to our drought-stricken areas – creative ways where we can be looking to partner with the government within our local areas, between our states – how we can maximize these proposals without a big price tag. Because I think this is going to be one of the issues that we're going to be wrestling with here. Again, I think something you could suggest or in the alternative, are there things that we have in place that are barriers to being more effective than we are right now? Where we could remove them and it doesn't cost us money, which is a good thing. But it allows you to be more effective and more efficient.

Kightlinger: Thank you very much, Madam Chair. A couple of suggestions, things to look at. Obviously, money is tight and it's always going to be a tremendous challenge. But there are some creative ideas in some of the legislative proposals out there. Building on what has been successful in the transportation industry, TIFIA. There's ideas to use that for reuse water, RIFIA. And there's also WIFIA proposal out there. So these ideas are ways in which we can stretch dollars – use matching funds and put burden on locals to come up with matching funds. Loan guarantee programs have also been very successful in the rail industry. And I think there's some look at a loan guarantee program for large-scale projects throughout the West. Not a huge hit. It would be paid back. But the idea is that, you know, there is some interest money in things that would be used obviously for the local projects. Those are some creative ideas out there. I think it's old tools should be used. So, to the extent RIFIA, WIFIA, these loan guarantee programs make sense and can be accepted. We think those are old valuable tools that can provide some help.

In terms of what other things that aren't costing. Deputy Secretary Connor talked a bit about trying to streamline – in California, we've been looking at a new conveyance program that's a \$15 billion proposal that our Governor has put on that would be entirely funded by us, the ratepayers, the water users. And yet, we're in year eight of environmental permitting. We've spent \$240 million today in developing an environmental document. And we're still minimum six months away from record decision notice determination. We've generated about 80,000 pages of analysis to date.

You know, it's a large, complicated project. We get it. But at some point, we're at paralysis by analysis. We need to find more creative ways to speed up these processes.

Murkowski: Makes me feel like Alaska. Thank you. We will be exploring more creative ways to try to address some of the financial and funding issues. Senator Cantwell.

Cantwell: That makes me think of Washington. So, I think, I really don't have any more questions. I would just on that last point, I think that's where we need to be. We just need to be on that level of creativity. And you get that when everybody comes to the table and is at the table together. That's when you get the creativity. Because what hold it up is the disagreements. So, I just hope that we can look at 1894 and move it through the process and figure out ways to enhance whatever shortcomings there are. But, I do think, Madam Chair, there is a role for us to think about – how we're going to modernize our programs, because I really do think that some of these smaller storage programs can get underway, like, immediately, and that helps. And I think figuring out what we can do at the federal level. I really do think that we can help save ourselves dollars by working creatively. I know Senator Feinstein said she's going to look at what are those revenue opportunities. But clearly this is an economic impact to the federal economy, and we need to be smart about what we put in place so that we're minimizing that impact to us in the future. We are going to California's expenses will be our expenses, as well, as well as other Western drought situations. So, anyway, appreciate all the witnesses today and look forward to working with you to try to get this resolved, hopefully, very, very soon.

Murkowski: Senator Heinrich.

Heinrich: I appreciate the concern over pay fors, and these are real challenges. I would only make the point that we're going to need real dollars to fix these issues. And one of my concerns about the House bill is that the pay fors referenced are really authorization pay fors, they're not appropriations pay fors. In my view, they're not real money. And we're going to need real money to fix these things. I'm going to end with one last question for Mr. Oglesby.

I wanted to touch on something that I think piqued the interest of the Chair, and it's a big part of our challenges on an arid basin with seven different storage structures, and different authorizations by Congress for each of those structures that are not coordinated in any reasonable way, except through deviations. That's a huge challenge. So wearing your conservancy district cap, can you talk a little bit more about what that means? And, for example, if you were dealing with a tight, dry summer, and it's July, and you release water as a conservancy district from El Vado Reservoir. And then suddenly we get monsoon rains that negate the need to actually irrigate with that water that you've released into the river, can you capture that in Cochiti Reservoir downstream? And hold it and use it for later irrigation? Or other uses? Or do you just have to just watch that water go by?

Oglesby: Yeah, thank you, Senator Heinrich. We watch that water go by. It's a three day transit time from the reservoir where we store out agricultural water. And, as you say, if it rains in the interim when that water is moving down and our farmers don't need it, and they don't take it, that water moves on down to Texas, and we lose the advantage of that water. Reauthorizing Cochiti, which is envisioned in Senate Bill 1936 is critical. It's going to be complicated. Of course, any reservoir operation is complicated. But if we could move that water from El Vado and hold it in Abiquiu, for example. If we could hold it in Cochiti just for a little bit. In one other option that we're looking at within the Conservancy District is can we do small-scale temporary storage within our own works? Can we capture these erratic, unexpected rainfalls that come in, and perhaps hold them within our facilities just for a day or two, and then wait for the farmers to need that water? We're looking at all these options. So it's not just our seven reservoirs that we'd like to operate in a coordinated fashion, but it's how we can integrate our existing systems with those coordinated reservoir operations.

Heinrich: Well, I think, I just used that example, just to show that I know all of this is relatively complicated, but we are managing the entire basin in a way that's uncoordinated. And so when you have dramatically less input, in terms of gross quantity of water, and you have no flexibility to coordinate all of these structures, the seven reservoirs, you own works at the conservancy district. We've seen very innovative things like Albuquerque doing storage underground in the aquifer. We're going to have to be more nimble in the future, and we certainly ought to be coordinating the federal infrastructure in a way that could potentially be of benefit for all of the users, irrespective of what perspective they come from. Thank you, Madam Chair.

Murkowski: Senator Heinrich, thank you. When you think about the situation in California, so much of the attention, when we talk about the impact to the economy, we think about the agriculture sector and how that has been notably impacted. But I was really struck by this article that somebody referenced – maybe it was one of the senators that was testifying. But it was an article in the *Post* a couple – oh, I guess it was a longer time ago. So it was back in May. But when you look to the various sectors that would take the brunt of job losses and continuing ongoing drought, if the Colorado River ran dry for a year – please let's hope that that does not happen, but the job losses, one would initially think, is going to be all about the ag sector. But it's in real estate, it's in finances, retail trade, the professional, the tech sector. But the sector that impacted most dramatically is health care. And I think it's a reminder to us all of the significance of available water supply and how it impacts everything that we do within our economies. And, again, when I was in California meeting with the farmers, I sat down and had a conversation with the rice growers. And I'm thinking, okay, it's really all about rice.

With those rice growers, it was all about water fowl. It was all about the impact to the habitat for the birds and the geese that were coming south and that were snacking on the rice leftover in the fields there. So, it's a reminder to us that the

impact here is so broad, it is so wide, that our failure to address it can have extraordinarily significant impact.

I think you reminded us, Ms. Woolf, with your words. I think you said something about the weight being on all of us to come up with a solution. Know that I certainly feel that way. I think colleagues do, as well, that we have an obligation to try to work with you all, not only in California, but across the West, better understanding our water sources. It's the West right now. But it will have impact far beyond the West of the United States. And I think we appreciate the responsibility. So I look forward to working with you all. I had asked Mr. Kightlinger for good out-of-the-box suggestions and would invite each of you to join us in that, as well, and submit what you can. This is the end of the hearing right now, but it's really the beginning of very constructive work and a lot of hard work. So, thank you for your willingness to join us in this. And with this, the Committee stands adjourned.

From: Sarah Woolf

Sent: Wednesday, October 14, 2015 5:03 PM

To: Ara Azhderian; Dan Keppen; dcardoz@foley.com; Jason Peltier; David Bernhardt; Johnny Amaral

Subject: Fwd: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Attachments: QFRs for Ms. Woolf from the 10-8-15 ENR Cmte Drought Hrg.docx; Untitled attachment 06697.htm

Well I got off much easier than Dan Keppen.

Sarah Woolf

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>

Date: October 14, 2015 at 2:33:19 PM PDT

To: "[REDACTED]@[REDACTED].[REDACTED]" <[REDACTED]@[REDACTED].[REDACTED]>

Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)"

<Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)"

<Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)"

<Rebecca_Bonner@energy.senate.gov>

Subject: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Good afternoon, Ms. Woolf. Attached are Questions for the Record which have been submitted to you by Chairman Murkowski and Senator Hirono from last Thursday's hearing regarding drought legislation. We respectfully request that you provide your responses to these questions by **Friday, November 6, 2015** for inclusion in the official hearing record.

Please provide the responses directly to me, and feel free to contact me if you have any questions. Thank you for your assistance with this request.

Sincerely,

Darla Ripchensky, PMP

Chief Clerk

U.S. Senate Committee on Energy and Natural Resources

304 Dirksen Senate Office Building

Washington, DC 20510

202.224.3607

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation
Questions for the Record Submitted to Ms. Sarah Woolf**

Questions from Chairman Lisa Murkowski

Question 1: What have been the impacts from the drought on you farm's operations?

Question 2: Why does the House bill give better direction to the agencies?

Question 3: What do you see as the deficiencies of S.1894?

Question 4: What provisions of the two bills do you see having the most in common?

Questions from Senator Mazie Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Question 2: I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing.

I would like to hear from you, given your personal experience with farming and your work with Water Wise, about your advice on how folks in other states should be thinking about long-term water use and conservation on an individual level. As we know from experience with the recycling and energy efficiency movements, it takes a while to change lifestyles.

Do you think it would be helpful if there was some kind of federal incentive available to individuals to conserve water and thus increase awareness of the impacts that our daily activities have on water sources? For example, changing federal programs to incentivize water conservation, efficiency, and reuse either when infrastructure is being built or retrofitted with federal money.

From: Johnny Amaral

Sent: Wednesday, October 14, 2015 5:06 PM

To: Sarah Woolf

CC: Ara Azhderian; Dan Keppen; dcardoza@foley.com; Jason Peltier; David Bernhardt

Subject: Re: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Ha. We can take a crack at the answers. Just say go.

Best,

Johnny Amaral

On Oct 14, 2015, at 5:02 PM, "Sarah Woolf" <[REDACTED]@[REDACTED]> wrote:

Well I got off much easier than Dan Keppen.

Sarah Woolf

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>

Date: October 14, 2015 at 2:33:19 PM PDT

To: "[REDACTED]@[REDACTED]>"; [REDACTED] <[REDACTED]@[REDACTED]>

Cc: "Kearney, Christopher (Energy)"

<Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)"

<Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)"

<Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)"

<Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)"

<Rebecca_Bonner@energy.senate.gov>

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304 Dirksen Senate Office Building

Washington, DC 20510

202.224.3607

<QFRs for Ms. Woolf from the 10-8-15 ENR Cmte Drought Hrg.docx>

From: Sarah Woolf

Sent: Wednesday, October 14, 2015 7:37 PM

To: David Bernhardt; Johnny Amaral

Subject: Fwd: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Attachments: QFRs for Mr. Keppen from the 10-8-15 ENR Cmte Drought Hrg.docx; Untitled attachment 06691.htm

Just so you know what Dan Keppen was asked too.

Ara and Dennis Cardoza are working on these with Dan.

Thank you,

Sarah Woolf

Water Wise

██████████@██████████
559-██████████-██████████

Begin forwarded message:

From: "Dan Keppen" <dankeppen@charter.net>

Subject: FW: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Date: October 14, 2015 at 3:19:49 PM PDT

To: "Ara Azhderian" <ara.azhderian@sldmwa.org>, "Jason Peltier"

<jason.peltier@sldmwa.org>, <██████████@██████████:██████████> "Dennis Cardoza" <dcardoza@foley.com>

FYI. This will keep me busy, for a bit.

From: Ripchensky, Darla (Energy) [mailto:Darla_Ripchensky@energy.senate.gov]

Sent: Wednesday, October 14, 2015 2:37 PM

To: Dan Keppen (dankeppen@charter.net) <dankeppen@charter.net>

Cc: Kearney, Christopher (Energy) <Christopher_Kearney@energy.senate.gov>; Stansbury, Melanie (Energy) <Melanie_Stansbury@energy.senate.gov>; Donnelly, Kellie (Energy)

<Kellie_Donnelly@energy.senate.gov>; Huffnagle, Jason (Energy)

<Jason_Huffnagle@energy.senate.gov>; Bonner, Rebecca (Energy)

<Rebecca_Bonner@energy.senate.gov>

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Washington, DC 20510
202.224.3607

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation
Questions for the Record Submitted to Mr. Dan Keppen

Questions from Chairman Lisa Murkowski

Question 1: In your testimony, you reference your report, *Innovations in Agriculture Stewardship: Stories of Conservation and Drought Resilience in the Arid West.*” Could you briefly describe how it came about, describe one of the case studies and the results?

Question 2: What should be our key takeaway from your report?

Question 3: In your testimony you say “federal agencies managing the competing demands for water in the West have in some cases failed to examine or pursue opportunities for more flexible water management that serves both economic and environmental goals. Can you give an example?

Question 4: What do you believe will be the most effective provisions of H.R. 2898 in maximizing water delivery?

Question 5: In your testimony you suggest that we must invest in the Western Water infrastructure necessary to meet current and future needs and that our existing is aging and in need of repair. Given the limits of the federal budget, what is the most effective way the government can be a partner in that investment?

Question 6: Can you summarize the key points of your recent article “The 2014 drought and water management policy impacts on California’s Central Valley food production?”

Question 7: In your testimony, you stated that the role of the Federal Government should be from the “ground up” rather than a “top down” approach. Can you specify, in your opinion, what “ground up” approaches might the federal government play a role in advancing?

Question 8: You mentioned how policies of strict or rigid regulatory standards have negatively impacted farmers. Can you expand on some of these impacts in terms of direct economic loss or damages?

Question 9: Of the concerns you mentioned regarding the SOD, can you expand on why you think the current public comment period is not sufficient for obtaining relevant feedback from stakeholders?

Question 10: Could you expand on losses experienced by stakeholders as a consequence of these drought years? Are they quantifiable at this time?

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation
Questions for the Record Submitted to Mr. Dan Keppen

Question 11: With regard to fallowing programs, given that any provisions on water rights have an associated economic impact, what should the role of the federal government be in minimizing these impacts?

Questions from Senator Mazie Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

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Question 2: I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing.

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From: Johnny Amaral
Sent: Thursday, October 15, 2015 7:03 AM
To: David Bernhardt; Tom Birmingham
Subject: Phone call today

Gents,

Can you hop on a conf call today around 2pm PST to discuss the assistance requested by Damon Nelson?

Best,

Johnny Amaral

From: Bernhardt, David L.
Sent: Thursday, October 15, 2015 8:40 AM
To: Johnny Amaral
CC: Tom Birmingham
Subject: Re: Phone call today

Yes

David Bernhardt

> On Oct 15, 2015, at 10:03 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:
>
>
> Gents,
>
> Can you hop on a conf call today around 2pm PST to discuss the assistance requested by Damon Nelson?
>
> Best,
>
> Johnny Amaral
>
>

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From: Tom Birmingham
Sent: Thursday, October 15, 2015 9:01 AM
To: Johnny Amaral
CC: David Bernhardt
Subject: Re: Phone call today

I am not available at 2:00 p.m.

Sent from my iPhone

> On Oct 15, 2015, at 7:03 AM, "Johnny Amaral" <jamaral@westlandswater.org> wrote:
>
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> Gents,
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> Johnny Amaral
>

From: Johnny Amaral
Sent: Thursday, October 15, 2015 9:06 AM
To: Tom Birmingham
CC: David Bernhardt
Subject: Re: Phone call today

I'm available anytime between 1:45 and 3:45 PST. And anytime between 5:00 and 6:00pm PST. Would anytime in that window work?

Best,

Johnny Amaral

> On Oct 15, 2015, at 9:01 AM, "Tom Birmingham" <tbirmingham@westlandswater.org> wrote:
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> I am not available at 2:00 p.m.
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>> Johnny Amaral
>>

From: Bernhardt, David L.
Sent: Thursday, October 15, 2015 9:14 AM
To: Johnny Amaral
CC: Tom Birmingham
Subject: Re: Phone call today

I cant be available after 2:45.

David Bernhardt

> On Oct 15, 2015, at 12:06 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:
>
>
> I'm available anytime between 1:45 and 3:45 PST. And anytime between 5:00 and 6:00pm PST. Would anytime in that window work?
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> Best,
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From: Tom Birmingham
Sent: Thursday, October 15, 2015 10:07 AM
To: 'Bernhardt, David L.'; 'Johnny Amaral'
Subject: RE: Phone call today

Can we talk now?

-----Original Message-----

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Thursday, October 15, 2015 9:14 AM
To: Johnny Amaral <jamaral@westlandswater.org>
Cc: Tom Birmingham <tbirmingham@westlandswater.org>
Subject: Re: Phone call today

I cant be available after 2:45.

David Bernhardt

> On Oct 15, 2015, at 12:06 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>

>

> I'm available anytime between 1:45 and 3:45 PST. And anytime between 5:00 and 6:00pm PST. Would anytime in that window work?

>

> Best,

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> Johnny Amaral

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>> Sent from my iPhone

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>>> Gents,

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>>> Can you hop on a conf call today around 2pm PST to discuss the assistance requested by Damon Nelson?

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>>> Johnny Amaral

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Subject: Re: Phone call today

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From: Bernhardt, David L.
Sent: Thursday, October 15, 2015 11:11 AM
To: Johnny Amaral
CC: Tom Birmingham
Subject: Re: Phone call today

I can make that work.

David Bernhardt

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From: Johnny Amaral
Sent: Thursday, October 15, 2015 12:13 PM
To: Bernhardt, David L.
CC: Tom Birmingham
Subject: Re: Phone call today

David,

I just got off the phone with Tom. He is available at 2pm PST. Let's use the call in number for the Friday am calls

Best,

Johnny Amaral

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>>

From: Noles, Holly A.
Sent: Friday, October 16, 2015 8:45 AM
To: 'jamaral@westlandswater.org'
Subject: David Bernhardt

Hello Mr. Amaral-

David is available for a phone call Monday during the times listed below. Please let me know if you would like me to set one up.

10:30AM-11AM EST
5-6PM EST
7-8PM EST

Respectfully,

Holly Noles

Holly A. Noles
Executive Assistant
Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, DC 20005
202.652.2352 tel
HNOLES@bhfs.com

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From: Bernhardt, David L.
Sent: Monday, October 19, 2015 6:23 AM
To: Johnny Amaral
Subject: Today's call

Johnny: I will not be able to be on the 1 pm call today. I'll be in the air.

David Bernhardt

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From: Dennis Nuxoll

Sent: Monday, October 19, 2015 7:18 AM

To: 'DCardoza@foley.com'; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'; 'Johnny Amaral'

Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

Sorry I have been getting a 10 state drought letter organized and this slipped. Can we set a time to visit? Dennis I can appreciate having Joe on the call but since he and Nancy are tight we might as well keep with the previous group as composed. In suggesting this call my thought was to try and get our 3 orgs coordinated since we tend to be the most proactive in our group which unfortunately does necessitate a slightly smaller circle.

Anyway, as I have said from the beginning I'm open to either configuration- with Joe and Nancy or without. If others feel as Dennis does I will send out a scheduling email accordingly.

-D

From: DCardoza@foley.com [mailto:DCardoza@foley.com]

Sent: Tuesday, October 13, 2015 2:26 PM

To: Dennis Nuxoll <dnuxoll@WGA.COM>; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)' <Anne.MacMillan@wonderful.com>; 'Bernhardt, David L.' <DBernhardt@BHFS.com>; 'Johnny Amaral' <jamaral@westlandswater.org>

Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

I think a quick call to discuss strategy on the Duck meeting is important at a minimum. Dennis.... Btw I would like Raeder at least in on the discussion because he represents so much of the water community that will have impact on Duck.

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Anyway, usually on the water strategy sessions I host our organizations end up being the most proactive- shall we do a call to discuss greater leaves of coordination among ourselves? Alternatively, I am happy to continue including Joe Raeder and Nancy if we collectively wish however.

-Dennis

Dennis Nuxoll

Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

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From: DCardoza@foley.com
Sent: Monday, October 19, 2015 7:49 AM
To: Dennis Nuxoll
CC: Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com); Bernhardt, David L.; Johnny Amaral
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

I'm cool either way.

Congressman Dennis A. Cardoza ret.
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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Email: dnuxoll@wga.com<<mailto:dnuxoll@wga.com>>

Website: www.wga.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wga.com_&d=AwMFAg&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkjmjCNM24pCPMnJRMu5cnOh9t0O7w&m=RDGJoIh_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu85iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>

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Sent: Monday, October 19, 2015 7:56 AM
To: DCardoza@foley.com
CC: Dennis Nuxoll; Bernhardt, David L.; Johnny Amaral
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

I would really like to do at least one call with just the folks on this email :)

Anne MacMillan
The Wonderful Company
(202) 550-8525

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> Congressman Dennis A. Cardoza ret.

> Foley & Lardner LLP

> Suite 600

> 3000 K Street, NW<x-apple-data-detectors://0/0>

> Washington, DC 20007-5109<x-apple-data-detectors://0/0>

> Phone: 202.295-4015

> Fax: 202.672.5399<tel:202.672.5399>

> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

>

>

> Sent from my iPhone

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>

> From: DCardoza@foley.com<<mailto:DCardoza@foley.com>> [<mailto:DCardoza@foley.com>]

> Sent: Tuesday, October 13, 2015 2:26 PM

> To: Dennis Nuxoll <dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>>>; 'Anne MacMillan - Roll Global

(Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>>)'
<Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>>>; 'Bernhardt, David L.'
<DBernhardt@BHFS.com<<mailto:DBernhardt@BHFS.com>>>; 'Johnny Amaral'
<jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>>
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> From: Dennis Nuxoll [<mailto:dnuxoll@WGA.COM>]
> Sent: Tuesday, October 13, 2015 12:26 PM
> To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>>>; 'Bernhardt, David L.'; Cardoza, Dennis A.; 'Johnny Amaral'
> Subject: Coordination call in the wake of Damon and Weaver taking over?

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> Vice President, Federal Government Affairs
> Western Growers
> 1776 Eye Street NW, Suite 255
> Washington, DC 20006
> Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·
> Email: dnuxoll@wga.com<<mailto:dnuxoll@wga.com>>
> Website: www.wga.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wga.com_&d=AwMFAg&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmiCNM24pCPMnJRMu5cnOh9t0O7w&m=RDGJolh_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu85iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>>

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Sent: Monday, October 19, 2015 9:24 AM
To: 'MacMillan, Anne'; DCardoza@foley.com
CC: 'Dennis Nuxoll'; 'Bernhardt, David L.'
Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

After 12:00pm PST today works for me

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From: MacMillan, Anne [<mailto:Anne.MacMillan@wonderful.com>]
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To: DCardoza@foley.com
Cc: Dennis Nuxoll <dnuxoll@WGA.COM>; Bernhardt, David L. <DBernhardt@BHFS.com>; Johnny Amaral <jamaral@westlandswater.org>
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(202) 550-8525

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>

>

>

> Congressman Dennis A. Cardoza ret.

> Foley & Lardner LLP

> Suite 600

> 3000 K Street, NW <x-apple-data-detectors://0/0> Washington, DC

> 20007-5109 <x-apple-data-detectors://0/0>

> Phone: 202.295-4015

> Fax: 202.672.5399 <<tel:202.672.5399>>

> Email: dcardoza@foley.com <<mailto:dcardoza@foley.com>>

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> Website:

> www.wga.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wg

> a.com_&d=AwMFAg&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPM

> nJRMu5cnOh9t0O7w&m=RDGJoIh_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu8

> 5iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>

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From: Johnny Amaral

Sent: Monday, October 19, 2015 9:29 AM

To: Dennis Cardoza; Denny Rehberg; Catherine Karen; David Bernhardt

Subject: no call today

From: Dennis Nuxoll
Sent: Monday, October 19, 2015 9:48 AM
To: 'Johnny Amaral'; 'MacMillan, Anne'; 'DCardoza@foley.com'
CC: 'Bernhardt, David L.'
Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

Can folks do 4 Pm est today?

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Sent: Monday, October 19, 2015 12:24 PM
To: 'MacMillan, Anne' <Anne.MacMillan@wonderful.com>; DCardoza@foley.com
Cc: Dennis Nuxoll <dnuxoll@WGA.COM>; 'Bernhardt, David L.' <DBernhardt@BHFS.com>
Subject: RE: Coordination call in the wake of Damon and Weaver taking over?

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> [a.com_&d=AwMFAG&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPM](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wga.com_&d=AwMFAG&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPM)
> [nJRMu5cnOh9t0O7w&m=RDGJlH_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu8](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wga.com_nJRMu5cnOh9t0O7w&m=RDGJlH_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu8)
> [5iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wga.com_5iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>)
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From: DCardoza@foley.com
Sent: Monday, October 19, 2015 9:49 AM
To: Dennis Nuxoll
CC: Johnny Amaral; MacMillan, Anne; Bernhardt, David L.
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

No with Bill Clinton. Done at 5 pm

Congressman Dennis A. Cardoza ret.
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
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To: 'Anne MacMillan - Roll Global

(Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>><<mailto:Anne.MacMillan@wonderful.com>>);

'Bernhardt, David L.'; Cardoza, Dennis A.; 'Johnny Amaral'

Subject: Coordination call in the wake of Damon and Weaver taking over?

Can we all visit on a conf call either late this week or early next to discuss coordination on the CA negotiations? One area of concern has been the lack of political insight that has been coming out of the process to date; lack of real-time information outside of the negotiation bubble to us that would allow us to help clear political roadblocks that may have popped up OR information to us to help set the stage with constituents for compromises that are coming. Perhaps with Damon and Weaver now taking a leadership role that can improve. Also Dennis has talked about engaging with Duck.

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-Dennis

Dennis Nuxoll

Vice President, Federal Government Affairs Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 . Cell: 202 701 6744 Fax: 202.296.0206 .

Email: dnuxoll@wga.com<<mailto:dnuxoll@wga.com>><<mailto:dnuxoll@wga.com>>

Website:

www.wga.com<<http://www.wga.com>><https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wga.com<http://a.com>_&d=AwMFAG&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkmjCNM24pCPMnJRMu5cnOh9t0O7w&m=RDGJolh_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu85iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>>

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From: MacMillan, Anne
Sent: Monday, October 19, 2015 9:49 AM
To: Dennis Nuxoll
CC: Johnny Amaral; DCardoza@foley.com; Bernhardt, David L.
Subject: Re: Coordination call in the wake of Damon and Weaver taking over?

Yes

Anne MacMillan
The Wonderful Company
(202) 550-8525

> On Oct 19, 2015, at 12:47 PM, Dennis Nuxoll <dnuxoll@WGA.COM> wrote:

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> Can folks do 4 Pm est today?

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> Sent: Monday, October 19, 2015 12:24 PM

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>> Suite 600

>> 3000 K Street, NW<x-apple-data-detectors://0/0> Washington, DC

>> 20007-5109<x-apple-data-detectors://0/0>

>> Phone: 202.295-4015

>> Fax: 202.672.5399<tel:202.672.5399>

>> Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

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> m>

> Sent from my iPhone

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>
> On Oct 19, 2015, at 10:18 AM, Dennis Nuxoll
<dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>><<mailto:dnuxoll@WGA.COM>>> wrote:
>
> Sorry I have been getting a 10 state drought letter organized and this slipped. Can we set a time to visit? Dennis I can appreciate having Joe on the call but since he and Nancy are tight we might as well keep with the previous group as composed. In suggesting this call my thought was to try and get our 3 orgs coordinated since we tend to be the most proactive in our group which unfortunately does necessitate a slightly smaller circle.
>
> Anyway, as I have said from the beginning I'm open to either configuration- with Joe and Nancy or without. If others feel as Dennis does I will send out a scheduling email accordingly.
>
> -D
>
> From:
> DCardoza@foley.com<<mailto:DCardoza@foley.com>><<mailto:DCardoza@foley.com>>
> m>
> [<mailto:DCardoza@foley.com>]
> Sent: Tuesday, October 13, 2015 2:26 PM
> To: Dennis Nuxoll
> <dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>><<mailto:dnuxoll@WGA.COM>>>;
> 'Anne MacMillan - Roll Global
> (Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>><<mailto:Anne.MacMillan@wonderful.com>>)'
> <Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>><mai
> lto:Anne.MacMillan@wonderful.com>>;
> 'Bernhardt, David L.'
> <DBernhardt@BHFS.com<<mailto:DBernhardt@BHFS.com>><<mailto:DBernhardt@BHFS.com>>>; 'Johnny Amaral'
> <jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>><<mailto:jamaral@westlandswater.org>>>
> Subject: RE: Coordination call in the wake of Damon and Weaver taking over?
>
> I think a quick call to discuss strategy on the Duck meeting is important at a minimum. Dennis.... Btw I would like Raeder at least in on the discussion because he represents so much of the water community that will have impact on Duck.
>
> From: Dennis Nuxoll [<mailto:dnuxoll@WGA.COM>]
> Sent: Tuesday, October 13, 2015 12:26 PM
> To: 'Anne MacMillan - Roll Global
> (Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>><<mailto:Anne.MacMillan@wonderful.com>>)';
> 'Bernhardt, David L.'; Cardoza, Dennis A.; 'Johnny Amaral'
> Subject: Coordination call in the wake of Damon and Weaver taking over?
>
> Can we all visit on a conf call either late this week or early next to discuss coordination on the CA negotiations? One area of concern has been the lack of political insight that has been coming out of the process to date; lack of real-time information outside of the negotiation bubble to us that would allow us to help clear political roadblocks that may have popped up OR information to us to help set the stage with constituents for compromises that are coming. Perhaps with Damon and Weaver now taking a leadership role that can improve. Also Dennis has talked about engaging with Duck.
>
> Anyway, usually on the water strategy sessions I host our organizations end up being the most proactive- shall we do a call to discuss greater leaves of coordination among ourselves? Alternatively, I am happy to continue including Joe Raeder and Nancy if we collectively wish however.
>
> -Dennis
>
> Dennis Nuxoll
> Vice President, Federal Government Affairs Western Growers
> 1776 Eye Street NW, Suite 255
> Washington, DC 20006
> Tel: 202.296.0191 . Cell: 202 701 6744 Fax: 202.296.0206 .
> Email: dnuxoll@wga.com<<mailto:dnuxoll@wga.com>><<mailto:dnuxoll@wga.com>>
> Website:
> www.wga.com<<http://www.wga.com>><[https://urldefense.proofpoint.com/v2/u](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.wg)
> rl?u=http-3A__www.wg

> a.com<<http://a.com>>_&d=AwMFAg&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH
> 8bkmjCNM24pCPM
> nJRMu5cnOh9t0O7w&m=RDGJoIh_PDvIqC7Wq8Wtd2sAssGAm5iuocZHO15uhdU&s=CRDu8
> 5iO8bU684fGJsAcwQ96k92o5zuos0Ub5gweqNQ&e=>

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From: Dan Keppen

Sent: Monday, October 19, 2015 10:23 AM

To: 'Sarah Woolf'; 'Ara Azhderian'; dcardoz@foley.com; 'Jason Peltier'; 'David Bernhardt'; 'Johnny Amaral'

Subject: RE: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

I'm working on responding to QFRs now. I could use some help on this one:

"What do you believe will be the most effective provisions of H.R. 2898 in maximizing water delivery?"

I would gladly welcome anything you have to offer on this, especially from a technical perspective.

THANKS

Dan

From: Sarah Woolf [mailto: [REDACTED]@ [REDACTED]]

Sent: Wednesday, October 14, 2015 5:03 PM

To: Ara Azhderian <ara.azhderian@sldmwa.org>; Dan Keppen <dankeppen@charter.net>; dcardoz@foley.com; Jason Peltier <jason.peltier@sldmwa.org>; David Bernhardt <dbernhardt@bhfs.com>; Johnny Amaral <jamaral@westlandswater.org>

Subject: Fwd: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Well I got off much easier than Dan Keppen.

Sarah Woolf

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>

Date: October 14, 2015 at 2:33:19 PM PDT

To: "[REDACTED]@ [REDACTED]" <[REDACTED]@ [REDACTED]>

Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)"

<Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)"

<Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)"

<Rebecca_Bonner@energy.senate.gov>

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Please provide the responses directly to me, and feel free to contact me if you have any questions. Thank you for your assistance with this request.

Sincerely,

Darla Ripchensky, PMP

Chief Clerk

U.S. Senate Committee on Energy and Natural Resources

304 Dirksen Senate Office Building

Washington, DC 20510

202.224.3607

From: Dan Keppen

Sent: Monday, October 19, 2015 3:21 PM

To: 'Susan Ramos'

Subject: FW: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

As discussed....thanks!

From: Dan Keppen [mailto:dankeppen@charter.net]

Sent: Monday, October 19, 2015 10:23 AM

To: 'Sarah Woolf' <[REDACTED]@[REDACTED]> 'Ara Azhderian' <ara.azhderian@sldmwa.org>; 'dcardoza@foley.com' <dcardoza@foley.com>; 'Jason Peltier' <jason.peltier@sldmwa.org>; 'David Bernhardt' <dbernhardt@bhfs.com>; 'Johnny Amaral' <jamaral@westlandswater.org>

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THANKS

Dan

From: Johnny Amaral

Sent: Monday, October 19, 2015 4:06 PM

To: 'Dan Keppen'; 'Sarah Woolf'; 'Ara Azhderian'; dcardoza@foley.com; 'Jason Peltier'; 'David Bernhardt'

Subject: RE: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

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Am I missing anything Dave or Dennis???

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Sent: Monday, October 19, 2015 10:23 AM

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Sincerely,

Darla Ripchensky, PMP
Chief Clerk
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510
202.224.3607

From: Dan Keppen

Sent: Monday, October 19, 2015 9:01 PM

To: 'Johnny Amaral'; 'Sarah Woolf'; 'Ara Azhderian'; dcardoza@foley.com; 'Jason Peltier'; 'David Bernhardt'

Subject: RE: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Johnny – thanks. This is very helpful.

Dan

From: Johnny Amaral [mailto:jamaral@westlandswater.org]

Sent: Monday, October 19, 2015 4:06 PM

To: 'Dan Keppen' <dankeppen@charter.net>; 'Sarah Woolf' <[REDACTED]@[REDACTED]>; 'Ara Azhderian' <ara.azhderian@sldmwa.org>; dcardoza@foley.com; 'Jason Peltier' <jason.peltier@sldmwa.org>; 'David Bernhardt' <dbernhardt@bhfs.com>

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Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)" <Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)" <Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)" <Rebecca_Bonner@energy.senate.gov>

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U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510
202.224.3607

From: DCardoza@foley.com
Sent: Tuesday, October 20, 2015 5:23 AM
To: Dan Keppen
CC: Johnny Amaral; Sarah Woolf; Ara Azhderian; Jason Peltier; David Bernhardt
Subject: Re: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

I think you got the most important provisions Johnny.

Congressman Dennis A. Cardoza ret.
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

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Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov><mailto:Christopher_Kearney@energy.senate.gov>>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov><mailto:Melanie_Stansbury@energy.senate.gov>>, "Donnelly, Kellie (Energy)" <Kellie_Donnelly@energy.senate.gov><mailto:Kellie_Donnelly@energy.senate.gov>>, "Huffnagle, Jason (Energy)" <Jason_Huffnagle@energy.senate.gov><mailto:Jason_Huffnagle@energy.senate.gov>>, "Bonner, Rebecca (Energy)" <Rebecca_Bonner@energy.senate.gov><mailto:Rebecca_Bonner@energy.senate.gov>>
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From: Dennis Nuxoll

Sent: Tuesday, October 20, 2015 9:17 AM

To: 'Johnny Amaral'; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'DCardoza@foley.com'; 'Bernhardt, David L.'

Subject: follow-up mtg on Thursday

Thank you to those who could make the quick call yesterday. Johnny suggested that we reengage on Thursday after the House Member mtg occurs on Wed. Given the importance of that mtg to the potential timing of a deal that seems to make sense and afterward we can discuss next steps more concretely.

Would either Thursday at 3 or Thursday at 4 eastern work?

Dennis Nuxoll

Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

From: MacMillan, Anne
Sent: Tuesday, October 20, 2015 9:25 AM
To: Dennis Nuxoll
CC: Johnny Amaral; DCardoza@foley.com; Bernhardt, David L.
Subject: Re: follow-up mtg on Thursday

4 works better for me but can make 3 work if needed.

Anne MacMillan
The Wonderful Company
(202) 550-8525

On Oct 20, 2015, at 12:16 PM, Dennis Nuxoll <dnuxoll@WGA.COM> wrote:

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Washington, DC 20006
Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·
Email: dnuxoll@wga.com
Website: www.wga.com

From: Johnny Amaral
Sent: Tuesday, October 20, 2015 10:40 AM
To: MacMillan, Anne
CC: Dennis Nuxoll; DCardoza@foley.com; Bernhardt, David L.
Subject: Re: follow-up mtg on Thursday

Looks like the member meeting is thursday at 11:30.

Best,

Johnny Amaral

On Oct 20, 2015, at 9:24 AM, "MacMillan, Anne" <Anne.MacMillan@wonderful.com> wrote:

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Anne MacMillan
The Wonderful Company
(202) 550-8525

On Oct 20, 2015, at 12:16 PM, Dennis Nuxoll <dnuxoll@WGA.COM> wrote:

Thank you to those who could make the quick call yesterday. Johnny suggested that we reengage on Thursday after the House Member mtg occurs on Wed. Given the importance of that mtg to the potential timing of a deal that seems to make sense and afterward we can discuss next steps more concretely.

Would either Thursday at 3 or Thursday at 4 eastern work?

Dennis Nuxoll
Vice President, Federal Government Affairs
Western Growers
1776 Eye Street NW, Suite 255
Washington, DC 20006
Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·
Email: dnuxoll@wga.com
Website: www.wga.com

From: DCardoza@foley.com
Sent: Tuesday, October 20, 2015 11:09 AM
To: Dennis Nuxoll
CC: Johnny Amaral; Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com); Bernhardt, David L.
Subject: Re: follow-up mtg on Thursday

I can do either time. Thanks. Dennis

Congressman Dennis A. Cardoza ret.
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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From: Dennis Nuxoll
Sent: Tuesday, October 20, 2015 11:25 AM
To: 'DCardoza@foley.com'
CC: 'Johnny Amaral'; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Bernhardt, David L.'
Subject: RE: follow-up mtg on Thursday

Lets shoot for 4 Pm- gives us a few more minutes to collect intel. I will send a notice

-----Original Message-----

From: DCardoza@foley.com [<mailto:DCardoza@foley.com>]
Sent: Tuesday, October 20, 2015 2:09 PM
To: Dennis Nuxoll <dnuxoll@WGA.COM>
Cc: Johnny Amaral <jamaral@westlandswater.org>; Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com) <Anne.MacMillan@wonderful.com>; Bernhardt, David L. <DBernhardt@BHFS.com>
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Foley & Lardner LLP
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Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
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Email: dnuxoll@wga.com<<mailto:dnuxoll@wga.com>>

Website: www.wga.com<[https://urldefense.proofpoint.com/v2/url?u=http-](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.wga.com_&d=AwMFAG&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkjCNM24pCPMnJRMu5cnOh9t0O7w&m=pzssDfom2FaiTi2wlpHY43Oahfy0ACplDh26x1kZXTM&s=mJL5_hIFoLjH-uDNaaGht5-BsSAipNIIO_xftYD1CM4&e=>)

[3A_www.wga.com_&d=AwMFAG&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkjCNM24pCPMnJRMu5cnOh9t0O7w&m=pzssDfom2FaiTi2wlpHY43Oahfy0ACplDh26x1kZXTM&s=mJL5_hIFoLjH-uDNaaGht5-BsSAipNIIO_xftYD1CM4&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.wga.com_&d=AwMFAG&c=Rlm5WhGmPEr8srpDE4r86Q&r=yhMHKvJkYaWoH8bkjCNM24pCPMnJRMu5cnOh9t0O7w&m=pzssDfom2FaiTi2wlpHY43Oahfy0ACplDh26x1kZXTM&s=mJL5_hIFoLjH-uDNaaGht5-BsSAipNIIO_xftYD1CM4&e=>)>

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From: Bernhardt, David L.
Sent: Friday, October 23, 2015 2:44 PM
To: Rojewski, Cole
CC: jamaral@westlandswater.org; Dunklin, Kristina
Subject: Re: Negotiations

Cole: I just left you a voicemail. Feel free to call me at 1-████-████-████ this evening, or I'll call you tomorrow.

Best,
David.

██████████

On Oct 23, 2015, at 1:47 PM, Rojewski, Cole <Cole.Rojewski@mail.house.gov> wrote:

David-

Just left a message with your assistant about scheduling a meeting for either Monday or Tuesday.

I want to set up to talk about Sec. 102,103, 202, 203, 204

Feel free to call me over the weekend and I can explain more. Cell 559-392-9632

Thank you,
Cole

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

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From: Johnny Amaral
Sent: Monday, October 26, 2015 10:40 AM
To: 'Fuentes, Andrew (Feinstein)'
Subject: RE: scheduling request

Tom would like to discuss water supply legislation and the negotiations taking place. He will likely have either Dennis Cardoza or David Bernhardt from our DC team with him

From: Fuentes, Andrew (Feinstein) [mailto:Andrew_Fuentes@feinstein.senate.gov]
Sent: Monday, October 26, 2015 10:01 AM
To: Johnny Amaral <jamaral@westlandswater.org>
Subject: RE: scheduling request

Great! Any specific topics for the meeting and will anyone be joining Mr. Birmingham?

From: Johnny Amaral [mailto:jamaral@westlandswater.org]
Sent: Monday, October 26, 2015 12:35 PM
To: Fuentes, Andrew (Feinstein) <Andrew_Fuentes@feinstein.senate.gov>
Subject: RE: scheduling request

Thursday at 2:30 would work

From: Fuentes, Andrew (Feinstein) [mailto:Andrew_Fuentes@feinstein.senate.gov]
Sent: Monday, October 26, 2015 9:33 AM
To: Johnny Amaral <jamaral@westlandswater.org>
Subject: RE: scheduling request

Would anytime Thursday between 2:30-4:30pm work?

From: Johnny Amaral [mailto:jamaral@westlandswater.org]
Sent: Monday, October 26, 2015 12:30 PM
To: Fuentes, Andrew (Feinstein) <Andrew_Fuentes@feinstein.senate.gov>
Subject: RE: scheduling request

Hi Andrew,

Thanks for the quick reply. Right now Tom has a lot of options. How about 9 am or any time AFTER 12:30 on Wednesday?

From: Fuentes, Andrew (Feinstein) [mailto:Andrew_Fuentes@feinstein.senate.gov]
Sent: Monday, October 26, 2015 9:10 AM
To: 'Johnny Amaral' <jamaral@westlandswater.org>
Subject: RE: scheduling request

Hi Johnny,

I am happy to help scheduling this meeting. What is Mr. Birmingham's availability on Wednesday and Thursday?

-Andrew

From: Duck, Jennifer (Feinstein)
Sent: Monday, October 26, 2015 12:03 PM
To: 'Johnny Amaral' <jamaral@westlandswater.org>
Cc: Fuentes, Andrew (Feinstein) <Andrew_Fuentes@feinstein.senate.gov>
Subject: RE: scheduling request

I'm sure we can. I have cc'd Andrew who's my new assistant and can help with scheduling

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Monday, October 26, 2015 11:55 AM
To: Duck, Jennifer (Feinstein) <Jennifer_Duck@feinstein.senate.gov>
Subject: scheduling request

Hi Jennifer,

Tom Birmingham is in DC this week and would like to come by on Wednesday or Thursday to meet with you and John. Can we make something work?

Johnny

From: Bernhardt, David L.

Sent: Monday, October 26, 2015 2:23 PM

To: Johnny Amaral

Subject: Fwd: Scheduling Request for a meeting with Tom Birmingham on Wednesday or Thursday

FYI

David Bernhardt

Begin forwarded message:

From: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>

Date: October 26, 2015 at 5:16:21 PM EDT

To: "Bernhardt, David L." <DBernhardt@BHFS.com>

Subject: Re: Scheduling Request for a meeting with Tom Birmingham on Wednesday or Thursday

Hi david,

Let's do noon Wednesday.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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From: Tom Birmingham
Sent: Tuesday, October 27, 2015 2:32 PM
To: Johnny Amaral
CC: Bernhardt, David L.
Subject: Re: scheduling request

Yes to costa dinner; Thursday night.

Sent from my iPhone

On Oct 27, 2015, at 9:26 AM, "Johnny Amaral" <jamaral@westlandswater.org> wrote:

Ok. Regarding your schedule.....do you want to go to dinner with Jim Costa. And if so, which evening do you prefer?

Best,

Johnny Amaral

On Oct 27, 2015, at 5:00 AM, "Tom Birmingham" <tbirmingham@westlandswater.org> wrote:

Please ask Jose to develop answers to Garamendi's questions, to the extent he can.

Sent from my iPhone

On Oct 26, 2015, at 9:22 PM, "Johnny Amaral" <jamaral@westlandswater.org> wrote:

FYI. I'm scheduled to talk to Garrett tomorrow to go thru these questions. But even so, I'm sure these questions will come up when you meet with Rep. Garamendi.

Best,

Johnny Amaral

Begin forwarded message:

From: "Durst, Garrett" <Garrett.Durst@mail.house.gov>
Date: October 26, 2015 at 3:12:12 PM PDT
To: Johnny Amaral <jamaral@westlandswater.org>
Subject: RE: scheduling request

Thanks for setting this up Johnny. I was going to email you some follow up questions this week so the timing is perfect. Below are some questions that the Congressman thought of after your visit and I thought you might want to share with Tom prior to his meeting with the Congressman. Let me know if you have any questions!

- The exact language of the settlement states "Implementation of the provisions of this Agreement shall not alter the repayment obligation of any other long-term water service or repayment contractor receiving water from the Central Valley Project, or shift any costs to other such contractors that would have properly been assigned to Westlands....." Why aren't settlement contractors and exchange contractors explicitly mentioned in this provision as well?
- Who will be responsible for decided whether or not Westlands is fulfilling its drainage obligation?
- What type of monitoring measures/metrics will be in place to ensure that Westlands is fulfilling its drainage obligation?
- What is the total estimated dollar value of the CVP facilities that Westlands will take title to?
- What has been the annual drainage volume from 2000-2014?
- What is the estimated cost to Westlands of providing drainage?

Garrett

From: Johnny Amaral
[\[mailto:jamaral@westlandswater.org\]](mailto:jamaral@westlandswater.org)

Sent: Monday, October 26, 2015 6:10 PM

To: McAllister, Nicole; Durst, Garrett

Subject: RE: scheduling request

Thanks guys. We can make that work. Tom is looking forward to it. Sorry I'm going to miss it this time.

Johnny

From: McAllister, Nicole

[\[mailto:Nicole.McAllister@mail.house.gov\]](mailto:Nicole.McAllister@mail.house.gov)

Sent: Monday, October 26, 2015 1:51 PM

To: 'Johnny Amaral' <jamaral@westlandswater.org>;

Durst, Garrett <Garrett.Durst@mail.house.gov>

Subject: RE: scheduling request

Johnny,

The Congressman has availability to meet on Wednesday, October 28th at 1:45 pm in our office located at 2438 Rayburn Office Building.

Please let me know if Mr. Birmingham is available to meet at that date and time.

Thank you,

Nicole McAllister

Nicole McAllister | Scheduler & Legislative
Assistant

Office of Congressman John Garamendi (CA-03) | 2438
Rayburn House Office Building | Washington DC 20515
☎ 202-225-1880 | ✉ Nicole.McAllister@mail.house.gov

Text “**RepGaramendi**” to **828282** to receive regular
updates from Congressman Garamendi

<image001.jpg> <image002.png> <image003.png> <image004.png> <image005.gif>

From: Johnny Amaral

[\[mailto:jamaral@westlandswater.org\]](mailto:jamaral@westlandswater.org)

Sent: Monday, October 26, 2015 12:58 PM

To: Durst, Garrett <Garrett.Durst@mail.house.gov>;

McAllister, Nicole <Nicole.McAllister@mail.house.gov>

Subject: scheduling request

Garrett and Nicole,

Thank you so much for accommodating our meeting
request from a few weeks ago. I hope you're both
doing well.

I wanted to reach out again to see if Garret and the
Congressman might have a few minutes to meet this
week. Westlands Water District General Manager Tom
Birmingham will be in DC this week and would like to
come by on Wednesday or Thursday to meet with Mr.
Garamendi. He'd like to continue the conversation we
had a few weeks ago on the Drainage settlement
between the Dept. of justice, Interior, and
Westlands. Can we make something work on either of
those days?

Thanks in advance for your help.

Johnny Amaral

Deputy General Manager – External Affairs

Westlands Water District

From: Johnny Amaral
Sent: Tuesday, October 27, 2015 2:43 PM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: Re: scheduling request

Jim is not available Thursday night. He will be on an airplane flying back to California. Do you want me to see if he can have a cocktail before the steamboat reception?

Best,

Johnny Amaral

On Oct 27, 2015, at 2:32 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Yes to costa dinner; Thursday night.

Sent from my iPhone

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Garrett

From: Johnny Amaral
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Sent: Monday, October 26, 2015 6:10 PM
To: McAllister, Nicole; Durst, Garrett
Subject: RE: scheduling request

Thanks guys. We can make that work. Tom is looking forward to it. Sorry I'm going to miss it this time.

Johnny

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Thanks in advance for your help.

Johnny Amaral
Deputy General Manager – External
Affairs
Westlands Water District

From: Dennis Nuxoll

Sent: Wednesday, October 28, 2015 12:42 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'DCardoza@foley.com'; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: Letter that was sent to ENR + every Western state Senator

Attachments: October Western letter to Senate ENR Committee _FINAL W SIGNATORIES.PDF

This is the letter I mentioned that I was worked on with Family Farm Alliance and CA Farm Bureau. With the budget deal hot we didn't get as much press pickup as I would have liked but we got a couple of syndicated pieces placed. I think one ran in E&E News today for example.

Anyway, we are working on Act "2" for this as well.

-Dennis

Dennis Nuxoll

Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

October 27, 2015

The Honorable Lisa Murkowski
Chairwoman
Senate Energy & Natural Resources
Committee
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Senate Energy & Natural Resources
Committee
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairwoman Murkowski, Ranking Member Cantwell, and Members of the Committee:

We appreciate your leadership in conducting the Oct. 8, 2015, hearing on Western drought legislation. On behalf of the thousands of Western farmers, ranchers and businesses we represent, as well as the millions of urban, suburban and rural residents that our organizations collectively provide water to, we urge that Westerners in the Senate put aside partisan differences and work together to produce compromise legislation that can be passed by both the Senate and the House, and signed into law by the president this year.

Your committee can draw upon a strong foundation to create this legislation. Over the course of this year your committee has heard a multitude of bills that would address short, medium and long-term aspects of the drought both on a West-wide as well as state specific scale. Your October drought hearing looked at legislation that would impact New Mexico as well as two bills – H.R. 2898 (introduced by California Rep. David Valadao) and S. 1894 (introduced by California Sen. Dianne Feinstein) – that could have positive impacts in California and other Western states. Further strong leadership will be required in order to find consensus on this legislation intended to address the drought in California and across the West.

Water challenges in the West are significant and daunting. The Colorado River Basin has experienced the driest 15- year period since the 1960s with above-average flows in only three of the last 15 years.¹ According to research evaluating tree rings the ongoing drought in California is the worst to hit the region since the 13th century.² Drought conditions in the Pacific Northwest are the worst seen in decades with no end in sight. Drought also exacerbates already declining forest health, increases the risk and severity of devastating mega-fire and threatens the origin of water supplies for millions in the West.

In order to respond to current and future water shortages, Congress must provide federal agencies with more flexibility under existing environmental laws and regulations to encourage a more

¹ US Bureau of Reclamation, "US Bureau of Reclamation Upper Colorado Region," 11 July 2014. [Online]. Available: <http://www.usbr.gov/uc/water/crsp/cs/gcd.html>.

² Evidence Suggests California's Drought is the Worst in 1,200 Year, Woods Hole Oceanographic Institution, News Release, Dec. 14, 2014 found at <http://www.whoi.edu/news-release/California-drought>.

cooperative approach toward achieving multiple goals. And, where such flexibility currently exists in laws, Congress should demand that agencies use those flexibilities to act with the urgency and promptness that this drought crisis demands.

Western drought legislation should shift the regulation of water resources away from the current adversarial structure that regards agriculture as a harmful activity that must be minimized in order to maximize environmental benefits. We must move toward an approach that encourages cooperation and innovation to produce better results for both agriculture and the environment. This includes promoting the use of new technology in water management. Real-time monitoring and data collection can be used to more closely align water supply operations to actual fishery and environmental needs.

As a nation we must invest (and reinvest) in the Western water infrastructure necessary to meet current and future demands. Our existing water infrastructure in the West is aging and in need of rehabilitation. We need new water storage in order to adapt to a changing hydrology and develop usable and sustainable supplies to meet growing demands for water. Failing to improve infrastructure and expand useable supplies will inevitably result in more conflict as pressure grows to ‘solve’ urban and environmental water problems by taking water from agriculture.

Streamlining permitting processes and alignment of regulatory agencies will help increase water storage and improve water management. The federal government can continue to be a partner in solving these water problems in the West by using financing mechanisms that have a very low cost to the Treasury and make water resources investment more attractive and affordable for non-federal interests.

Both H.R. 2898 and S. 1894 are intended to address counter-productive regulatory practices and expedite new water storage projects, and both measures would facilitate the use of water management tools such as voluntary transfers. While the House and Senate bills take sometimes starkly different approaches to achieving their common goals, these differences should not be irreconcilable for members of Congress working together to bring effective relief to the West as quickly as possible.

While many of the above ideas are found in the separate bills your committee has heard, multiple competing bills are of no help to the drought-stricken West. We need the committee to bring these ideas together in a single, effective compromise bill that can be signed into law before the end of the year. We’re counting on you to work together to make that happen. We’re counting on you to ensure that Western water users have every tool available to survive and recover from the current drought and to prepare for the hard, dry years that the future may hold.

We stand ready to assist you in any way that leads to a unified legislative response to the critical drought crisis our communities are facing.

Sincerely,

National and Regional Organizations

American Farm Bureau Federation
Family Farm Alliance
Klamath Water Users Association (CALIFORNIA / OREGON)
National Cattlemen's Beef Association
National Onion Association
National Potato Council
National Water Resources Association
Northwest Horticultural Council
Pacific Northwest Vegetable Association
Public Lands Council
Rocky Mountain Farmers Union
Rural & Agriculture Council of America
United Fresh Produce Association
Western Alfalfa Seed Growers Association
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association

Arizona

Agribusiness & Water Council of Arizona
Arizona Cotton Growers Association
Arizona Farm Bureau
Arizona Nursery Association
Salt River Project
United Dairymen of Arizona
Wellton-Mohawk Irrigation and Drainage District

California

African American Farmers of California
Agricultural Council of California
American Pistachio Growers
Almond Hullers and Processors Association
Association of California Egg Farmers
Association of California Water Agencies
California Agricultural Irrigation Association
California Alfalfa & Forage Association
California Association of Wheat Growers
California Bean Shippers Association
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners Association
California Cotton Growers Association

California (Continued)

California Farm Bureau Federation
California Forestry Association
California Fresh Fruit Association
California Grain and Feed Association
California League of Food Processors
California Milk Producers Council
California Pear Growers Association
California Seed Association
California State Floral Association
California Warehouse Association
California Women for Agriculture
Central Valley Project Water Association
Friant North Authority
Friant Water Authority
Glenn-Colusa Irrigation District
Nisei Farmers League
North Bay Water Reuse Authority
Northern California Water Association
Pacific Egg & Poultry Association
San Joaquin River Exchange Contractors Water Authority
San Luis & Delta-Mendota Water Authority
Santa Ynez River Water Conservation District, ID No.1
Sonoma County Water Agency
South Valley Water Association
Tehama-Colusa Canal Authority
United Ag
Valley Ag Water Coalition

Colorado

Colorado Association of Conservation Districts
Colorado Association of Wheat Growers
Colorado Cattlemen's Association
Colorado Corn Growers Association
Colorado Dairy Farmers
Colorado Farm Bureau
Colorado Fruit and Vegetable Growers Association
Colorado Onion Growers Association
Colorado Pork Producers Council
Colorado Potato Administrative Committee
Colorado State Grange
Dolores Water Conservancy District
Fulton Irrigation Ditch
Northern Colorado Water Conservancy District
Southwestern Water Conservation District

Idaho

Idaho Farm Bureau
Idaho Oregon Fruit and Vegetable Association
Idaho Potato Commission
Idaho Water Users Association

Kansas

Kansas Water Congress

Montana

Montana Farm Bureau

Nebraska

Central Nebraska Public Power and Irrigation District
Nebraska State Irrigation Association

Nevada

Nevada Cattlemen's Association
Nevada Farm Bureau
Truckee-Carson Irrigation District

New Mexico

Elephant Butte Irrigation District
Middle Rio Grande Conservancy District
New Mexico Farm Bureau

Oregon

Deschutes Basin Board of Control
Oregon Association of Nurseries
Oregon Cattlemen's Association
Oregon Dairy Farmers Association
Oregon Farm Bureau
Oregon Potato Commission
Oregon Seed Council
Oregon Water Resources Congress
Oregonians for Food and Shelter

Utah

Davis and Weber Counties Canal Company
North Ogden Irrigation Company
Ogden River Water Rights Committee
Ogden River Water Users' Association
South Ogden Conservation District

Utah Farm Bureau
Utah Water Conservancy District
Utah Water Users Association
Weber-Box Elder Conservation District
Weber River Water Users Association

Washington

Columbia Basin Development League
Hop Growers of Washington
Washington Asparagus Commission
Washington Association of Wheat Growers
Washington Blueberry Commission
Washington Cattle Feeders Association
Washington Farm Bureau
Washington Friends of Farms & Forests
Washington Mint Growers Association
Washington Red Raspberry Commission
Washington State Council of Farmer Cooperatives
Washington State Grape Society
Washington State Hay Growers Association
Washington State Potato Commission
Yakima Basin Joint Board

Wyoming

Wyoming Association of Conservation Districts
Wyoming Farm Bureau
Wyoming Stock Growers Association

cc:

Senator John McCain
Senator Barbara Boxer
Senator Dianne Feinstein
Senator Michael Bennett
Senator Michael Crapo
Senator Jon Tester
Senator Dean Heller
Senator Harry Reid
Senator Tom Udall
Senator Jeff Merkley
Senator Orrin Hatch
Senator Patty Murray
Senator Michael Enzi

From: Joe Raeder

Sent: Wednesday, October 28, 2015 12:44 PM

To: Dennis Nuxoll; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'DCardoza@foley.com'; 'Bernhardt, David L.'; 'Johnny Amaral'

Subject: RE: Letter that was sent to ENR + every Western state Senator

Love the "water power players" bit.

WESTERN WATER:

Power players seek 'unified legislative response' to drought

[Annie Snider](#), E&E reporter

Published: Wednesday, October 28, 2015

With the winter rainy season looming, a who's who of Western water power players is calling on lawmakers to put aside the partisan battles that have plagued drought relief efforts for the past two years and reach a compromise in time to go into effect before January.

More than 100 agricultural groups and municipal water providers yesterday [wrote](#) Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) and ranking member Maria Cantwell (D-Wash.), asking for a "unified legislative response" to the record drought that is gripping broad swaths of the West.

"Western drought legislation should shift the regulation of water resources away from the current adversarial structure that regards agriculture as a harmful activity that must be minimized in order to maximize environmental benefits," wrote the groups, including the Family Farm Alliance, the Western Growers Association, the Association of California Water Agencies, and a number of regional irrigation and municipal water suppliers.

"We must move toward an approach that encourages cooperation and innovation to produce better results for both agriculture and the environment," they said.

California lawmakers in the House and Senate have been locked in negotiations for months over their different approaches to dealing with the state's crisis, now in its fifth year.

The House measure, [H.R. 2898](#) from Rep. David Valadao (R-Calif.) would loosen environmental restrictions and raise the bar for how much water should be pumped from the Sacramento-San Joaquin River Delta to parched agricultural communities in the Central Valley and municipalities farther south. Democratic Sens. Dianne Feinstein and Barbara Boxer's measure, [S. 1894](#) would take a less proscriptive approach, instead offering federal agencies more flexibility to make decisions aimed at increasing flows, while also making significant investments in desalination, water recycling and other long-term efforts.

While the interest groups yesterday noted that the two measures take some "starkly different approaches," they argue that the differences "should not be irreconcilable" for lawmakers.

They highlighted key areas -- increasing federal agencies' flexibility under environmental laws, investing in water infrastructure, and streamlining new storage projects -- that have been embraced by both California measures.

Murkowski, who has been looking to produce a West-wide water package, also highlighted these areas of agreement during a hearing on Western drought legislation earlier this month. But ultimately, she stressed to the

California lawmakers that common ground must be found in order for the process to move forward ([E&E Daily](#), Oct. 9).

But in an interview yesterday, Valadao said that little progress has been made.

"The Senate isn't exactly the friendlist and easiest and most receptive to anything from the House," he said. "Their overall Western bill package is moving along slower than I'd like to see."

Groups yesterday argued that time is of the essence.

In a statement, Western Growers President and CEO Tom Nassif said that a mark up would have to take place before Thanksgiving recess in order for legislation to have a shot at being in place when winter rains arrive.

"With multiple bills on the Western drought already introduced, the framework is in place to advance compromise legislation that addresses the needs of both agriculture and the environment," he said. "All that is left is for our elected leaders to take decisive action to ensure the future viability and prosperity of the West."

Reporter Debra Kahn contributed.

From: Dennis Nuxoll [mailto:dnuxoll@WGA.COM]

Sent: Wednesday, October 28, 2015 3:42 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'DCardoza@foley.com'; 'Bernhardt, David L.'; Joe Raeder; 'Johnny Amaral'

Subject: Letter that was sent to ENR + every Western state Senator

This is the letter I mentioned that I was worked on with Family Farm Alliance and CA Farm Bureau. With the budget deal hot we didn't get as much press pickup as I would have liked but we got a couple of syndicated pieces placed. I think one ran in E&E News today for example.

Anyway, we are working on Act "2" for this as well.

-Dennis

Dennis Nuxoll

Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

[Spam](#)

[Phish/Fraud](#)

[Not spam](#)

[Forget previous vote](#)

From: DCardoza@foley.com

Sent: Wednesday, October 28, 2015 1:51 PM

To: 'Dennis Nuxoll'; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: RE: Letter that was sent to ENR + every Western state Senator

Very good Dennis

From: Dennis Nuxoll [mailto:dnuxoll@WGA.COM]

Sent: Wednesday, October 28, 2015 3:42 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; Cardoza, Dennis A.; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: Letter that was sent to ENR + every Western state Senator

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Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

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From: Dennis Nuxoll

Sent: Wednesday, October 28, 2015 2:27 PM

To: 'DCardoza@foley.com'; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: RE: Letter that was sent to ENR + every Western state Senator

Attachments: WGA letter story.pdf

Here is the Bloomberg/BNA piece. Little more CA heavy than the E&E piece. Oh well different reporters focus on different aspects of the same pitch I suppose...

Anyway I'll let you know if I can work up an Act '2' to this. One national angle to do so then some state level angles. We'll see what hits.

From: DCardoza@foley.com [mailto:DCardoza@foley.com]

Sent: Wednesday, October 28, 2015 4:51 PM

To: Dennis Nuxoll <dnuxoll@WGA.COM>; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)' <Anne.MacMillan@wonderful.com>; 'Nancy Williams' <nwilliams@swaconsult.com>; 'Bernhardt, David L.' <DBernhardt@BHFS.com>; 'Joseph Raeder' <JRaeder@tfgnet.com>; 'Johnny Amaral' <jamaral@westlandswater.org>

Subject: RE: Letter that was sent to ENR + every Western state Senator

Very good Dennis

From: Dennis Nuxoll [mailto:dnuxoll@WGA.COM]

Sent: Wednesday, October 28, 2015 3:42 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'Cardoza, Dennis A.'; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: Letter that was sent to ENR + every Western state Senator

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Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

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Water Scarcity

Western Farm Groups Urge Quick Action By Senate Committee on Drought Bills

Western farm groups and other water users urged a Senate committee in an Oct. 27 letter to move quickly on legislation to address the drought.

The letter to the Senate Energy and Natural Resources Committee called for lawmakers to set aside partisan differences and craft compromise legislation that can pass both houses of Congress and get signed into law by the end of the year. It was signed by 130 agriculture and water districts in 10 states, including the national and state farm bureaus and growers groups as well as water and irrigation authorities.

Several bills currently wending their way through Congress have similar goals but contrasting approaches for dealing with the drought.

Among them is the Western Water and American Food Security Act of 2015 (H.R. 2898) introduced by Rep. David Valadao (R-Calif.) that has passed the House but faces a veto threat because the Obama administration is concerned that its provisions for more water storage could undermine elements of the Endangered Species Act (2015 WLPM, 7/16/15).

Sen. Dianne Feinstein (D-Calif.) is pushing another, the California Emergency Drought Relief Act of 2015 (S. 1894), which would promote water recycling, conservation and efficiency as well as more storage and more flexibility in water management (2015 WLPM 41, 10/14/15).

The letter does not come down in the support of either bill but rather urges lawmakers to forge a compromise.

“Both H.R. 2898 and S. 1894 are intended to address counter-productive regulatory practices and expedite new water storage projects, and both measures would facilitate the use of water management tools such as

voluntary transfers,” the letter said. “While the House and Senate bills take sometimes starkly different approaches to achieving their common goals, these differences should not be irreconcilable for members of Congress working together to bring effective relief to the West as quickly as possible.”

Among other measures, Congress should aim to provide federal regulators with flexibility under current environmental laws to encourage cooperation toward meeting multiple goals, the letter said.

“Western drought legislation should shift the regulation of water resources away from the current adversarial structure that regards agriculture as a harmful activity that must be minimized in order to maximize environmental benefits,” the letter said.

Examples of cooperative approaches include promoting the use of new technology in water management.

“Real-time monitoring and data collection can be used to more closely align water supply operations to actual fishery and environmental needs,” the letter said.

In a statement accompanying the letter, Tom Nassif, president and chief executive officer of Western Growers, which represents produce farmers in Arizona, California and Colorado, urged the Senate committee to mark up legislation by the Thanksgiving recess to provide a chance for “legislation is to be passed and signed into law before the end of the year.”

He also urged a loosening of operational restrictions applied to the Sacramento-San Joaquin Delta pumping plants, within the limits of the Endangered Species Act rules, to allow more available water to reach family farms and the communities dependent on these businesses.

By SUSAN BRUNINGA

To contact the reporter on this story: Susan Bruninga in Washington at sbruninga@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

From: Smith, Ryan A.

Sent: Wednesday, October 28, 2015 2:29 PM

To: 'cole.rojewski@mail.house.gov'

CC: tbirmingham@westlandswater.org; Bernhardt, David L.

Subject: Drainage Material

Attachments: Westlands-v-United-States-Settlement.pdf; hr308 Keep the Promise Act.pdf

Cole,

It was a pleasure meeting with you today. Per our conversation, I have attached Reclamation's statement regarding the drainage settlement, which discusses the potential costs savings to the United States. It provides, in part:

- **Reasons Settlement is in Best Interests of the United States**

- Total cost exposure to the United States from the *Firebaugh* injunction is \$3.5 billion (\$513 million authorized), and potential liability in the *Etchegoinberry* takings litigation ranges from zero to more than \$2 billion.
- Failure to resolve litigation will require providing drainage to lands served by the San Luis Unit, which – at an estimated cost of \$3.5 billion (\$513 million authorized) – will have a significant impact on Reclamation's regional and national budget and potentially disrupt funding for other programs. Complicating matters is the risk that Reclamation could be ordered to provide this drainage service notwithstanding the congressionally authorized construction ceiling under the San Luis Act of 1960.
- There is the potential for significant financial exposure to the treasury in the *Etchegoinberry* litigation.

I have also attached the cost estimate for the Keep the Promise Act, H.R. 308, which provides, in relevant part:

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO expects that the Tohono O'odham Nation would pursue litigation against the federal government if H.R. 308 is enacted. CBO has no basis for judging the outcome of that litigation. It is possible that the federal government would incur no compensation costs, or that it would pay the tribe a settlement or be ordered to pay compensation by a court. Any such payment would increase direct spending, and the amount could exceed \$1 billion. The federal government also would incur discretionary costs, which are subject to appropriation, to defend itself in the expected litigation. The amount of such costs would depend on the length and extent of the legal challenges.

In the case of the drainage settlement, we have even a stronger case for federal liability (and consequently a cost savings as a result of the settlement) based on (1) Reclamation's admission of the potential liability in the *Etchegoinberry* litigation of up to \$2 billion and (2) Reclamation's statement that it could be ordered by the court to provide drainage service notwithstanding the construction ceiling under the San Luis Act.

Should you have any questions, please do not hesitate to contact me.

Ryan

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MP Region Public Affairs, 916-978-5100, <http://www.usbr.gov/mp>, October 2015

Westlands v. United States Settlement

Current Litigation/Background for Settlement

- In 2000, the court in *Firebaugh Canal Co v. United States*, issued an Order requiring the Secretary of the Interior to provide drainage service to lands served by the San Luis Unit of the Central Valley Project. In 2007 Reclamation signed a Record of Decision selecting a drainage plan and finding that the cost of providing drainage for lands served by the San Luis Unit would be approximately \$2.6 billion. The costs are now estimated at approximately \$3.5 billion using 2015 cost indices. Reclamation began implementing the selected drainage plan in a portion of Westlands Water District in 2010 on a court-ordered schedule; Reclamation estimates that it has approximately \$513 million (in 2015 dollars) remaining in available cost ceiling under the San Luis Act.
- In 2011, individual landowners within Westlands Water District filed a takings claim against the United States alleging that failure to provide drainage service has caused a physical taking of their lands without just compensation in violation of the Fifth Amendment. *Etchegoinberry v. United States*. The Court of Federal Claims denied the government's motion to dismiss the complaint. While the complaint does not specify a dollar amount for damages, estimates suggest that federal liability for just compensation could range from zero to over \$2 billion.
- In January 2012, Westlands filed a breach of contract case alleging that the government's failure to provide drainage service to the Westlands' service area constituted a breach of Westlands' 1963 Water Service and 1965 Repayment contracts (including the interim renewal of those contracts). The case is currently pending.

Reasons Settlement is in Best Interests of the United States

- Total cost exposure to the United States from the Firebaugh injunction is \$3.5 billion (\$513 million authorized), and potential liability in the Etchegoinberry takings litigation ranges from zero to more than \$2 billion.
- Failure to resolve litigation will require providing drainage to lands served by the San Luis Unit, which – at an estimated cost of \$3.5 billion (\$513 million authorized) – will have a significant impact on Reclamation's regional and national budget and potentially disrupt funding for other programs. Complicating matters is the risk that Reclamation could be ordered to provide this drainage service notwithstanding the congressionally authorized construction ceiling under the San Luis Act of 1960. Thus, in order to fully



U.S. Department of the Interior

Bureau of Reclamation

implement a drainage solution, there must be an amendment to the construction cost ceiling for the San Luis Unit. Current implementation of the Control Schedule for completion of only a portion of the preferred alternative will take over 10 years and is based on a steady stream of appropriations.

- Removal of the court order to provide drainage service will allow Reclamation to pursue other water-policy initiatives in California.
- There is the potential for significant financial exposure to the treasury in the *Etchegoinberry* litigation.

Proposed Terms of the Settlement

* Implementation of the Settlement is contingent upon congressional authorization of enabling legislation.*

Under the Proposed Terms of the Settlement, Westlands will:

- *Permanently retire not less than 100,000 acres of land from production.* Westlands will agree to permanently retire a total of *not less than* 100,000 acres of lands within its boundaries utilizing those lands only for the following purposes:
 - Management of drain water, including irrigation of reuse areas;
 - Renewable energy projects;
 - Upland habitat restoration projects; or
 - Other uses subject to the consent of the United States.
- *Cap contract deliveries at 75% of its CVP contract amount (from 1.193 million acre-feet to 895 thousand acre-feet).* Any water above this 75% cap, that would have been delivered to Westlands, would instead be available to the United States for other public purposes under the CVP.
- *Assume all responsibility for drainage in accordance with all legal requirements under state and federal law.* Westlands would become legally responsible for the management of drainage water within its boundaries, in accordance with federal and California law.
- *Indemnify the United States for any damages and pay compensation for claims arising out of the Etchegoinberry litigation.* Under the Settlement Westlands will indemnify the United States for any claims (past, present and future) arising out of a failure to provide drainage service with Westlands. Westlands would also intervene in the *Etchegoinberry* case for Settlement purposes and would pay compensation to individual landowners.
- *Continue to wheel water to Lemoore Naval Air Station.* As part of the overall Settlement, CVP water will be made available to Lemoore Naval Air Station and Westlands would

agree to wheel all CVP water made available to Lemoore under the same terms and conditions as Westlands wheels water to other Westlands' contractors.

- *Be relieved from potential drainage repayment.* If the United States were to expend significant funds to provide a drainage solution, Reclamation would seek repayment from Westlands (over 50 years, with no interest, commencing after completion of each separable element). By taking responsibility for drainage, Westlands would also eliminate responsibility for repayment.

Under the Terms of the Settlement, the United States will:

- *Be relieved of all statutory obligations to provide drainage.* The Settlement Agreement would relieve the Department of the Interior from all drainage obligations imposed by the San Luis Act, including implementation of the 2007 ROD, which is estimated to cost approximately \$3.5 billion (\$513 million authorized). Westlands will agree to dismiss with prejudice the *Westlands v. U.S.* breach of contract litigation and will join the U.S. in petitioning for *vacatur* of the 2000 Order Modifying Partial Judgment in the *Firebaugh* case directing implementation of drainage service and control schedules.
- *Receive a waiver of claims for potential damages due to a failure to provide drainage service.* Westlands will agree to provide for the release, waiver and abandonment of all past, present and future claims arising from the government's failure to provide drainage service under the San Luis Act, including those by individual landowners within Westlands' service area, and would further agree to indemnify the United States for any and all claims relating to the provision of drainage service or lack thereof within the Westlands service area.
- *Relieve Westlands repayment obligation for CVP construction charges to date (approximately \$375 million).* Westlands will be relieved of its current, unpaid capitalized construction costs for the CVP, the present value of which is currently estimated to be \$375 million. Under the Settlement, Westlands will still be responsible for Operation and Maintenance, the payment of restoration fund charges pursuant to the CVPIA, and for future CVP construction charges.
- *Convert Westlands water service contract into a repayment contract.* The Secretary will convert Westlands' current 9(e) water service contract to a 9(d) repayment contract consistent with existing key terms and conditions. As a "paid out" contractor, the benefit of this conversion is permanent right to a stated share of CVP water. However, the terms and conditions of the contract—including the so called "shortage clause" – will otherwise be the same as in the current 9(e) contract.
- *Retain the right to cease water deliveries if Westlands fails to meet its drainage obligation.* Language in the Settlement makes the United States' obligation to provide water to Westlands under the 9(d) Repayment Contract conditional upon Westlands' fulfillment of its obligations to manage drainage water within its service area.

- *Issue a water service contract to Lemoore Naval Air Station.* As part of the overall Settlement, the United States is authorized to enter into a water service contract with Lemoore Naval Air Station to provide a guaranteed quantity of CVP water to meet the needs of the Naval Air Station associated with air operations and Westlands will agree to wheel all CVP water made available to Lemoore.

How Will Westlands Manage Drainage?

Westlands will use a suite of measures to manage drain water. The mix of measures Westlands uses will depend on the varying needs within the drainage-impaired areas, and will evolve as conditions change. These measures to be used include elements identified in Reclamation's drainage plan, such as land retirement, source control through more efficient irrigation practices, and collection and reuse of shallow groundwater. It will also depend upon ongoing monitoring and regulation of groundwater under the Long Term Irrigated Lands Regulatory Program being administered by the Central Valley Regional Water Quality Control Board, which is described further below. Options available to Westlands may include: (1) Land Retirement; (2) Groundwater Management; (3) Source Control; (4) Regional Reuse Projects; (5) Drain Water Treatment; and (6) Salt Disposal. Westlands would also take title to certain facilities including the portion of the San Luis Drain that lies within Westlands' service area

What Happens if Westlands Fails to Manage Drain Water After the Settlement is Approved?

Westlands will be subject to all state and federal laws and regulations regarding its obligation to provide drainage and will be subject to those requirements under the Settlement. Nothing in the Settlement abrogates or interferes with existing or future state and federal authority over any discharges of drain water from Westlands' service area or groundwater quality. In addition, if Westlands fails to meet its drainage obligation, language in the Settlement makes the United States' obligation to provide water to Westlands under the 9(d) Repayment Contract conditional upon Westlands' fulfillment of its obligations to manage drainage water within its service area.

Settlement Concerns Raised by Third Parties

Concern: Westlands is receiving a permanent allocation of water. To appropriately address this concern it is important first to address Westlands' water service contracts **without** the Settlement, and then compare current contractual rights with Westlands' rights **under** the Settlement if authorized by Congress.

CONDITIONS NOW: Under section 1(4) of the Act of July 2, 1956, Westlands, like other CVP water service and repayment contractors, has a "first right" to a share of water developed as part of the Central Valley Project ("CVP"), expressed as a "right to renew" a Reclamation contract. This first right means that Reclamation does not offer CVP water that is under current contract (either water service or repayment) to other potential users until the contractor has declined to contract for that water. Westlands' current interim contract reflects this concept, subject to certain terms and conditions, by providing a right to renew. Examples of such terms and conditions are:

- Reasonable and beneficial use as defined in state and federal Reclamation law;
- Payment of all operations, maintenance, capital, and other applicable charges appropriately allocated to Westlands;
- Other obligations being met within the Central Valley Project, including other contract priorities and any other applicable requirements of state and federal law, such as the federal Endangered Species Act.

Under current law, Westlands is required to repay the remaining capital allocated to it as part of constructing the CVP by 2030. Once this capital is paid out and appropriate federal accounting certifications are complete, Westlands would (1) no longer be subject to certain provisions of the federal Reclamation Reform Act; and (2) its “first right” to a share of CVP water would become what is called by law a “permanent right” to the same share. This permanent right would still be subject to terms and conditions of a contract with the United States, and would still be subject to limitations on CVP operations under applicable state and federal law.

CONDITIONS WITH SETTLEMENT: The following are the only changes from the current water service contract to a new repayment contract with Westlands, entered into under § 9(d) of the 1939 Reclamation Project Act, that would occur if the Settlement is authorized by Congress and signed into law:

- The capital costs of the CVP allocated to Westlands would be considered paid out. Thus, the benefits that would have otherwise been available to Westlands starting in 2030, would become available upon passage of the legislation;
- All terms and conditions that apply to the delivery of water to Westlands will still apply, AND two additional conditions would be added to a new repayment contract, as follows:
 1. Water deliveries to Westlands would be conditioned on fulfillment of its obligation to manage drainage water within its boundaries, and consistent with federal and state law; and
 2. Although the contractual share of CVP water available to Westlands is, and will continue to be, 1,193,000 acre feet, actual deliveries of water to Westlands will not exceed 895,000 acre feet, and Westlands agrees that any CVP water available in excess of 895,000 to which it may otherwise be entitled absent the Settlement, would be available to the Secretary to use for any other authorized purpose.

Concern: The contract quantity is still too large. Westlands is agreeing to a 25% reduction in deliveries as the maximum amount allowed under its contract. It is important to note this is the maximum delivery amount allowed under the contract. Westlands is still subject to beneficial use requirements under state law.

Concern: The United States is forgoing an opportunity to further relieve stress on the Delta by failing to demand additional cuts in water supply under the Settlement. Water exports will not increase based on the Settlement. The Settlement specifically avoids giving Westlands any greater rights to an annual allocation of water than Westlands would have had if the 9(e) water service contract had remained in place. Westlands is also subject to state law requirements for beneficial use, and may decide to retire additional lands as a means of managing drainage water.

Concern: The Settlement mandates insufficient land retirement. The Settlement secures the permanent retirement of lands now largely owned by Westlands; absent the Settlement, lands acquired by Westlands but currently fallowed could be brought back into production in the future. However, the land retirement requirement of 100,000 acres under the Settlement is not a cap on land retirement. Westlands will be able to target the acquisition and retirement of additional drainage-impacted lands to address local conditions and without the distorting effects of higher mandated retirement acreage on land prices.

Concern: The debt forgiveness is inappropriate. Under the terms of the Settlement Westlands is receiving debt forgiveness on past construction obligations for features of the CVP which amounts to approximately \$375 million. Westlands is receiving this in return for undertaking the drainage obligation, which if implemented by the United States would cost in excess of \$3.5 billion (\$513 million authorized), and for indemnifying the United States against future drainage claims. In addition, Westlands will still be responsible for any future repayment obligation associated with new features of the CVP.

Concern: No acreage limitation. As is allowed under current law, Westlands will be relieved of acreage limitations and full cost pricing under the Reclamation Reform Act. This is consistent with the capital repayment relief afforded Westlands under the Settlement.

Concern: How are other CVP water contractors and rate payers protected from increased rates as a result of the debt forgiveness? The Settlement protects other contractors from any shift in costs and specifically mandates that Westlands will continue to pay operation, maintenance and replacement costs in addition to any future new construction costs. Specifically, paragraph 17 of the Settlement provides that “[i]mplementation of the provisions of this Agreement shall not alter the repayment obligation of any other long-term water service or repayment contractor receiving water from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to Westlands absent this action, including operations and maintenance costs, construction costs, or other capitalized costs to Westlands after the date of this Agreement.”

The Settlement further provides in section 9(c)(v) “the repayment relief afforded to Westlands in subsection (iv) shall not extend to Westlands’ operation, maintenance and replacement obligations...or to construction costs or other capitalized costs not yet allocated to or incurred by Westlands as of the date of this Agreement....

Concern: Delta water quality will be impacted as a result of the Settlement. Delta water quality will not be impacted by the Settlement Agreement. Currently, Westlands does not discharge subsurface drainage water outside of its boundaries. Under the Settlement Agreement, Westlands will be obligated to manage drain water within its boundaries and will not be

permitted to discharge drainage to the Delta. Also, under the Settlement Agreement, Westlands' management of drainage water will continue to be regulated under current state and federal laws. Ultimately, if Westlands does not comply with its obligation to manage drain water, under the terms of the Settlement, its water supply can be cut off.



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 24, 2015

H.R. 308 **Keep the Promise Act of 2015**

As ordered reported by the House Committee on Natural Resources on March 25, 2015

SUMMARY

H.R. 308 would prohibit gambling (other than social games for prizes of minimal value) on property near Glendale, Arizona that is owned by the Tohono O’odham Nation and held in trust by the United States for the benefit of the tribe. That prohibition would last until 2027. The Tohono O’odham Nation is currently constructing a resort and casino on this property and expects to begin operations within a year.

Based on information from the Tohono O’odham Nation, CBO expects that if H.R. 308 were enacted, the tribe would pursue litigation against the federal government to recover its financial losses caused by the prohibition on gambling. Whether the tribe would prevail in such litigation and when those proceedings might be concluded are both uncertain. The basis for any judicial determination of the tribe’s financial losses is also uncertain. CBO estimates that possible compensation payments from the government could range from nothing to more than \$1 billion; however, we have no basis for estimating the outcome of the future litigation. Because enacting H.R. 308 could increase direct spending, pay-as-you-go procedures apply. Enacting H.R. 308 would not affect revenues.

By prohibiting gambling on land that the tribe is currently planning to use for such a purpose, the bill would impose an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act (UMRA). Absent the bill, CBO estimates that the tribe will collect more than \$100 million annually once the casino it is building begins operations, probably in 2016. Those costs would exceed the annual threshold established in UMRA (\$77 million in 2015, adjusted annually for inflation) in at least one of the first five years after enactment of the bill.

H.R. 308 contains no private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO expects that the Tohono O’odham Nation would pursue litigation against the federal government if H.R. 308 is enacted. CBO has no basis for judging the outcome of that litigation. It is possible that the federal government would incur no compensation costs, or that it would pay the tribe a settlement or be ordered to pay compensation by a court. Any such payment would increase direct spending, and the amount could exceed \$1 billion. The federal government also would incur discretionary costs, which are subject to appropriation, to defend itself in the expected litigation. The amount of such costs would depend on the length and extent of the legal challenges.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in 2015 and that under current law the Tohono O’odham Nation will probably commence gambling operations and begin generating gambling revenue in 2016.

Outcome of Future Litigation

CBO expects that enacting the legislation would probably result in litigation against the federal government by the Tohono O’odham Nation. Based on information from the tribe, CBO expects the tribe would seek compensation for financial losses caused by H.R. 308. To date, the tribe has prevailed in disputes with Arizona and other tribes about its planned gaming operations on the property. A 2013 district court decision on whether gambling on the site is consistent with current federal law concluded that “the Glendale-area land acquired by the Nation with LRA¹ funds qualifies for gaming under IGRA² § 2719(b)(1)(B)(1). The land also qualifies for gaming under § 3(j)(1) of the Compact, which specifically authorizes gaming on after-acquired lands that qualify for gaming under § 2719.”³

That decision is now under appeal at the Ninth Circuit Court of Appeals. Although the tribe has been successful in litigation thus far and construction of its resort and casino is underway, it may be more difficult for the tribe to prevail in a claim brought after enactment of H.R. 308 because of the types of claims available to it and the facts of this particular situation. The outcome of such litigation is uncertain. CBO expects the tribe would argue that the legislation caused either a regulatory taking of the tribe’s property interest in gaming on that land, or a breach of the settlement agreement that permitted the tribe to acquire the land for nonagricultural economic development purposes. In either circumstance, the federal government could be required to compensate the tribe. Any such

1. Gila Bend Indian Reservation Lands Replacement Act, Public Law 99-503

2. Indian Gaming Regulatory Act, Public Law 100-497

3. State of Arizona, et al. v Tohono O’odham Nation, 944 F. Supp. 2d 748, 756 (D. Ariz. 2013)

compensation would probably be paid from the Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States).

Amount of Compensation

To estimate the amount of compensation that might be due to the tribe, CBO reviewed the outcome of other cases involving regulatory takings, tribal land settlements, and gaming disputes. We also consulted with the Tohono O’odham Nation, other Arizona tribes, and federal and state agencies that regulate tribal gaming to estimate the net receipts that the tribe may realize from the casino operations of the resort now under construction.

CBO concluded that:

- Regulatory taking claims are often unsuccessful and usually do not lead to significant economic awards when (as in this case) the taking does not fully diminish the economic value of the property;
- The outcomes of disputes about tribal gaming and land settlement agreements vary and are generally dependent on the specific facts of each dispute, making it difficult to use past disputes to predict the outcome of new cases;
- Prohibiting the tribe from operating gambling activities at the resort and casino near Glendale could result in a loss of net income to the tribe of more than \$1 billion over the next decade; and
- Whether gaming was among the nonagricultural economic development activities envisioned under the tribe’s land settlement agreement is unclear because the property was acquired as a result of a land settlement agreement with the federal government that was enacted two years before the Indian Gaming Regulatory Act, which authorized gambling on tribal lands under certain circumstances.

CBO estimates that possible awards to the tribe following litigation could range from no monetary award to more than \$1 billion. After considering the uncertainties about whether the tribe would prevail in a future lawsuit against the federal government, and the unpredictability of the amount of any award, CBO concluded that there is no basis to predict the amount of monetary award or settlement, if any, that the tribe would receive as a result of the enactment of H.R. 308.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting H.R. 308 could increase direct spending over the 2015-2025 period; however, CBO has no basis for estimating the amount or timing of such spending, if any.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

By prohibiting gaming on land that the tribe is currently planning to use for such a purpose, the bill would impose an intergovernmental mandate, as defined in UMRA. Absent the bill, CBO estimates that the tribe will net more than \$100 million annually once the casino begins operations, probably in 2016. That estimate is a probabilistic assessment based on information from the tribe about projected revenues, accounting for uncertainty of projected revenues, operating expenses, and payments the tribe is required to make from gaming revenue, which all may be higher or lower than expected. It also accounts for the possibility that already pending legal actions could delay or prohibit gaming activities on the land. The cost of that mandate on the tribe would exceed the annual threshold established in UMRA (\$77 million in 2015, adjusted annually for inflation) in at least one of the first five years after enactment of the bill, CBO estimates.

If the bill is enacted and the tribe submits a successful claim for damages against the federal government, such settlement amounts would benefit the tribe.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 308 contains no private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Martin von Gnechten

Impact on State, Local, and Tribal Governments: Melissa Merrell

Impact on the Private Sector: Amy Petz

ESTIMATE APPROVED BY:

Theresa Gullo

Assistant Director for Budget Analysis

From: MacMillan, Anne

Sent: Thursday, October 29, 2015 6:38 AM

To: Dennis Nuxoll; 'DCardoza@foley.com'; 'Nancy Williams'; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: RE: Letter that was sent to ENR + every Western state Senator

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Anne

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Sent: Wednesday, October 28, 2015 4:51 PM

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<Anne.MacMillan@wonderful.com>; 'Nancy Williams' <nwilliams@swaconsult.com>; 'Bernhardt, David L.'

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From: Dennis Nuxoll [mailto:dnuxoll@WGA.COM]

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To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; Cardoza, Dennis A.; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

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Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

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Email: dnuxoll@wga.com

Website: www.wga.com

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From: DCardoza@foley.com
Sent: Thursday, October 29, 2015 6:39 AM
To: MacMillan, Anne
CC: Dennis Nuxoll; Nancy Williams; Bernhardt, David L.; Joseph Raeder; Johnny Amaral
Subject: Re: Letter that was sent to ENR + every Western state Senator

Good idea

Congressman Dennis A. Cardoza ret.
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

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On Oct 29, 2015, at 9:38 AM, MacMillan, Anne <Anne.MacMillan@wonderful.com<<mailto:Anne.MacMillan@wonderful.com>>> wrote:

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Sent: Thursday, October 29, 2015 6:49 AM

To: 'MacMillan, Anne'; 'DCardoza@foley.com'; 'Nancy Williams'; 'Bernhardt, David L.'; 'Joseph Raeder'; 'Johnny Amaral'

Subject: RE: Letter that was sent to ENR + every Western state Senator

Early in this process several companies expressed interest whether LLC, joint venture or coop. Rather than try to collect individual companies we decided to only collect trade associations who obviously represent many companies as well as water districts who in aggregate represent many. Anyway, we didn't keep track frankly of individual companies.

With that said I know a separate letter is being done in Washington state because several organizations there felt that the letter we did was too generic for their taste. Indeed, many folks in various states didn't sign because the letter wasn't specific to their states. We are working on several state specific letters or other types of calls to action along those lines in various of the 11 states as a result.

Long answer, certainly if folks want to do a letter that makes sense either on a state specific basis, or perhaps if there enough coops in the 11 states that they can do a western coops letter. I assume the coops communicate with each other across states or could use NCFC as a facilitator. If anyone wants to use ours- I can send the word version so its easier to cut and paste from.

From: MacMillan, Anne [mailto:Anne.MacMillan@wonderful.com]

Sent: Thursday, October 29, 2015 9:38 AM

To: Dennis Nuxoll <dnuxoll@WGA.COM>; 'DCardoza@foley.com' <DCardoza@foley.com>; 'Nancy Williams' <nwilliams@swaconsult.com>; 'Bernhardt, David L.' <DBernhardt@BHFS.com>; 'Joseph Raeder' <JRaeder@tfgnet.com>; 'Johnny Amaral' <jamaral@westlandswater.org>

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Subject: Dinner at Oceanaire

Location: 1201 F Street, NW

Start: 10/29/2015 4:30 PM

End: 10/29/2015 5:30 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Bernhardt, David L.

Required Attendees: 'damon.nelson@mail.house.gov'; 'cole.rojewski@mail.house.gov';
'jamaral@westlandswater.org'; Smith, Ryan A.; [REDACTED]@[REDACTED].[REDACTED] 'tbirmingham@westlandswater.org'

Resources: 1201 F Street, NW

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From: Dennis Nuxoll

Sent: Friday, October 30, 2015 3:42 PM

To: Dennis Cardoza; David Longly Bernhardt; Johnny Amaral; Anne MacMillan; Joseph Raeder; Nancy Williams

Subject: Fwd: Drought bill train is moving, with or without new federal assistance for water

Sent from my iPhone

Begin forwarded message:

From: Western Water Priorities <info@westernwaterpriorities.org<<mailto:info@westernwaterpriorities.org>>>

Date: October 30, 2015 at 6:35:26 PM EDT

To: Dennis <dnuxoll@wga.com<<mailto:dnuxoll@wga.com>>>

Subject: Drought bill train is moving, with or without new federal assistance for water

Reply-To: Western Water Priorities <info@westernwaterpriorities.org<<mailto:info@westernwaterpriorities.org>>>

Problems viewing this email? View it in your browser.<<http://us11.campaign-archive2.com/?u=b44b7496798557f89ed989535&id=69af054558&e=bedc109aac>>

House and Senate drought bill negotiators are moving into high gear. After years of stalemate on California drought legislation, House and Senate negotiators are moving forward to try to hammer out a compromise drought relief bill before Thanksgiving. The renewed urgency is a result of pressure from, among others, Senator Lisa Murkowski, the chairman of the Senate Energy and Natural Resources Committee, and Senator Maria Cantwell, the ranking democrat on the panel. The drought bill train is moving, and we urge you to write Senators Murkowski and Cantwell and other lawmakers involved in forging a compromise to let them know your priorities. See the attached draft letter for your use.

Click here<<http://westernwaterpriorities.us11.list-manage.com/track/click?u=b44b7496798557f89ed989535&id=7e2fe8ee5f&e=bedc109aac>> to express your support. Insert example(s) of how the funding tools in S. 1894 would help make progress on critical water infrastructure projects in your area. Be as specific as you can: include the total anticipated project cost, the amount of water that your project will produce, etc.)

Thank you for your support,

Western Water Priorities

Learn more at: <http://westernwaterpriorities.org/><<http://westernwaterpriorities.us11.list-manage.com/track/click?u=b44b7496798557f89ed989535&id=6d76df248e&e=bedc109aac>>

[<http://cdn-images.mailchimp.com/icons/social-block-v2/color-twitter-48.png>]<<http://westernwaterpriorities.us11.list-manage.com/track/click?u=b44b7496798557f89ed989535&id=e045fe9c93&e=bedc109aac>>

[<http://cdn-images.mailchimp.com/icons/social-block-v2/color-facebook-48.png>]<<http://westernwaterpriorities.us11.list-manage.com/track/click?u=b44b7496798557f89ed989535&id=e3085598cb&e=bedc109aac>>

[\[http://cdn-images.mailchimp.com/icons/social-block-v2/color-link-48.png\]](http://cdn-images.mailchimp.com/icons/social-block-v2/color-link-48.png)<<http://westernwaterpriorities.us11.list-manage.com/track/click?u=b44b7496798557f89ed989535&id=97bfb16876&e=bedc109aac>>

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Our mailing address is:
North Bay Water Reuse Authority
C/O Sonoma County Water Agency
404 Aviation Boulevard
Santa Rosa, CA 95403

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This email was sent to dnuxoll@wga.com<<mailto:dnuxoll@wga.com>>

why did I get this?<<http://westernwaterpriorities.us11.list-manage1.com/about?u=b44b7496798557f89ed989535&id=9ad553890a&e=bedc109aac&c=69af054558>> unsubscribe from this list<<http://westernwaterpriorities.us11.list-manage1.com/unsubscribe?u=b44b7496798557f89ed989535&id=9ad553890a&e=bedc109aac&c=69af054558>> update subscription preferences<<http://westernwaterpriorities.us11.list-manage.com/profile?u=b44b7496798557f89ed989535&id=9ad553890a&e=bedc109aac>>

NBWRA c/o Sonoma County Water Agency * 404 Aviation Blvd * Santa Rosa, CA 95403 * USA

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From: Johnny Amaral
Sent: Monday, November 2, 2015 2:03 PM
To: David Bernhardt; Denny Rehberg
Subject: Help!

Remind me which week Tom said he'd be in DC?

Best,

Johnny Amaral

From: Bernhardt, David L.
Sent: Monday, November 2, 2015 2:09 PM
To: Johnny Amaral
Subject: Re: Help!

The 16th

David Bernhardt

> On Nov 2, 2015, at 1:03 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:
>
>
> Remind me which week Tom said he'd be in DC?
>
> Best,
>
> Johnny Amaral
>
>

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From: Johnny Amaral
Sent: Monday, November 2, 2015 2:17 PM
To: 'Bernhardt, David L.'
Subject: RE: Help!

Thank you

-----Original Message-----

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Monday, November 2, 2015 1:09 PM
To: Johnny Amaral <jamara1@westlandswater.org>
Subject: Re: Help!

The 16th

David Bernhardt

> On Nov 2, 2015, at 1:03 PM, Johnny Amaral <jamara1@westlandswater.org> wrote:
>
>
> Remind me which week Tom said he'd be in DC?
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From: Denny Rehberg
Sent: Monday, November 2, 2015 3:53 PM
To: Johnny Amaral
CC: David Bernhardt
Subject: Re: Help!

Week of 9-13

.....
Mercury.

Denny Rehberg

Co-Chairman

(US Congressman 2001-2013)

The Portrait Building

701 8th Street NW | Suite 650

Washington, DC | 20001

202.261.4000 office | [REDACTED] mobile

www.mercuryllc.com

> On Nov 2, 2015, at 3:03 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>

>

> Remind me which week Tom said he'd be in DC?

>

> Best,

>

> Johnny Amaral

>

>

From: Bernhardt, David L.
Sent: Monday, November 2, 2015 4:00 PM
To: Denny Rehberg
CC: Johnny Amaral
Subject: Re: Help!
Attachments: image1b47eb.JPG; image1b47eb.JPG

Actually, Denny's correct

On Nov 2, 2015, at 2:53 PM, Denny Rehberg <DRehberg@mercuryllc.com> wrote:

Week of 9-13

.....
<image1b47eb.JPG>
Denny Rehberg
Co-Chairman
(US Congressman 2001-2013)
The Portrait Building
701 8th Street NW | Suite 650
Washington, DC | 20001
202.261.4000 office | [REDACTED] mobile
www.mercuryllc.com

> On Nov 2, 2015, at 3:03 PM, Johnny Amaral <jamara1@westlandswater.org> wrote:
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From: Johnny Amaral
Sent: Tuesday, November 3, 2015 8:33 AM
To: Sarah Woolf; David Bernhardt
Subject: Fwd: Questions for the Record

David,

Sarah and I talked a couple weeks back and she said she was going to take a stab at her questions.

Sarah,

Is that still the case?

Best,

Johnny Amaral

Begin forwarded message:

From: "Dan Keppen" <dankeppen@charter.net>
Date: November 3, 2015 at 7:28:37 AM PST
To: "Sarah Woolf" <[REDACTED]@[REDACTED]>; "Jason Peltier" <jason.peltier@sldmwa.org>; "Ara Azhderian" <ara.azhderian@sldmwa.org>; "Dennis Cardoza" <dcardoza@foley.com>; "Johnny WWD Amaral" <jamaral@westlandswater.org>
Subject: RE: Questions for the Record

Hi Everybody:

I'm working on finishing up my responses to the QFRs from the Oct 8 Senate ENR Committee hearing. I'll share my final draft responses with you later; I'm still waiting to hear back from the Committee to clarify one of the questions. In the meantime – I have a quick question I'm hoping you can help me with.

I've been asked to provide examples of where additional discretion can be utilized by the agencies when making water management decisions during drought. I've used Central Valley as one of three examples:

"Despite record-breaking dry conditions in California in 2014, and the Governor's declaration of a state-wide drought emergency, the Bureau of Reclamation, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service refused to invoke existing emergency authorities under the ESA that would have provided increased operational flexibility for the CVP and the State Water Project while still protecting listed species. When local water agencies pressed the federal agencies to use their existing emergency powers, they were told that it would likely result in the imposition of harsh "mitigation" measures."

Question - Do we have any background info, regs or statutes we could cite here to further strengthen this?

THANKS!

Dan

From: Sarah Woolf [[mailto:\[REDACTED\]@\[REDACTED\]](mailto:[REDACTED]@[REDACTED])]
Sent: Tuesday, October 13, 2015 3:21 PM
To: Dan Keppen <dankeppen@charter.net>
Cc: Jason Peltier <jason.peltier@sldmwa.org>; Ara Azhderian <ara.azhderian@sldmwa.org>; Dennis Cardoza <dcardoza@foley.com>; Mark Limbaugh <mlimbaugh@tfgnet.com>
Subject: Re: Questions for the Record

I think Dan has outlined things very well.

Just to clarify my thoughts. When reading back on the transcripts I think there is a specific exchange between Murkowski and Conner where she asks if he needs any additional authority to be able to streamline and speed up the permitting and operations process. He said he had "Broad Authority" but would think on what might be additionally helpful for him to have. I think we need to push on this issue. both is getting Connor to give specifics and to get it laid out what he can currently do.

This probably just made things muddier!

Thank you,

Sarah Woolf

Water Wise

[REDACTED]@[REDACTED]
559-[REDACTED]-[REDACTED]

On Oct 13, 2015, at 2:57 PM, Dan Keppen <dankeppen@charter.net> wrote:

Thanks, Jason. Thanks also, Ara, Sarah and Mr. Cardoza for the constructive call yesterday morning.

I talked to Mark Limbaugh about this earlier today, and he thinks it might be a good idea, when we talk to Chris Kearney, of asking that those QFRs associated with CVP/Bay-Delta/Trinity operations be directed to Sarah, and those that are more "west-wide" in nature be directed to me. Here's what we have so far; please feel free to share any suggested edits, concerns, or offer up other potential questions.

When we are comfortable with what we have, Mark will contact Chris and advance them. When I talked to Ara today, it sounds like he and Mr. Cardoza will advance similar suggestions (at least on the California issues). Please let me know if you have any questions or concerns about this matter.

Best regards –

Dan

Questions for Mr. Connor:

1. The Department of Interior and Bureau of Reclamation have existing authorities that your Department has not exercised (e.g. the emergency consultation process), after 6 years of drought in California. These authorities have been

used to cope with drought in the past; why are you not using them to cope with California's drought?

2. Senator Cantwell at the October 8, 2015 shared her understanding that "deliveries curtailed from the Delta Smelt biological opinion since 2000 basically – 2013 – have been curtailed, and the salmon, only accounted for less than 2% of the water restrictions." When asked for your opinion on this, you said "With respect to the Endangered Species Act, I think the 2% figure you referenced was from me in past statements and, I think, represents a little bit of bad math. But, it's 4% with respect to 2014."

Can you further explain how this figure was reached, and detail how much each biological opinion (salmon, smelt) contributed to this percentage?

3. Senator Gardner at the hearing asked you for your commitment to work on finding ways to continue to work through the regulatory process and the permitting process associated with new storage project construction. Can you detail how you will follow up to ensure that we find ways to streamline these processes?
4. On August 21, 2015, the Bureau of Reclamation announced plans to release up to 88,000 acre-feet of Central Valley Project water from Trinity Reservoir in the hope of aiding returning non-listed Chinook salmon. This action, which is outside of Reclamation's authorized place of use, is a repeat of a similar action taken last year with the intention to help avoid an outbreak of a naturally-occurring disease epidemic known as Ich. Since 2000, a significant supply of water has been set aside each year from the Trinity Reservoir for fishery protection purposes. Over the past four years, this has equated to more than 200,000 acre-feet of water lost which was literally flushed down the Lower Klamath River. Can you provide demonstrable biological benefits to the Chinook salmon populations these flows were intended to protect? Has Reclamation provided an assessment of the impact this re-directed water had on Central Valley water and power customers and endangered and threatened species? What ultimately happened to the chinook salmon who were able to return upstream to spawn? (just kidding, on that last one).

Questions for Sarah Woolf:

1. Do you believe that implementation of federal environmental laws has had an impact on water deliveries to you and your neighbors on the west side of the San Joaquin Valley? During the course of the hearing, Deputy Secretary Connor stated that management decisions related to the ESA accounted for 4% of water restrictions. Does this conform to your understanding?
2. Can you explain how regulations, litigation and agency management decisions have impacted the water supply reliability of you and your neighbors over the past 25 years?

Questions for Dan Keppen:

1. You included attached to your written testimony a report summarizing water conservation case studies conducted throughout the Colorado River Basin. Can you point to any one of these case studies as an example that might be used as a template for success in other areas of the West? (Answer: point to Pat O'Toole's ranch, where several types of irrigation practices are employed to benefit crop and livestock production and waterfowl. Show how properly developed and managed storage can provide multiple benefits, including enhancement of fish flows).
2. Are there areas of the West where collaborative, locally-driven solutions to water challenges have been successfully employed? (Answer – Deschutes River watershed, Sites JPA, maybe other examples from Cannon Michael's June testimony).
3. The House bill contains provisions that protect water rights. Why is that important to Western farmers and ranchers? (Answer – use as an opportunity to discuss our water rights white paper).
4. Several provisions of the House and Senate bills are intended to address operations flexibility in California's Bay-Delta. Do you believe that regulations have had an impact on the California drought? (Answer – yes. Use as an opportunity to submit our published journal article into the Congressional record).

From: Jason Peltier [<mailto:jason.peltier@sldmwa.org>]

Sent: Tuesday, October 13, 2015 12:34 PM

To: Ara Azhderian <ara.azhderian@sldmwa.org>; [REDACTED] @ [REDACTED] Johnny Amaral <jamaral@westlandswater.org>; Dan Keppen <dankeppen@charter.net>; Cannon Michael <cannon@bfarm.com>

Subject: Fwd: Drought hearing transcript

FYI

Begin forwarded message:

From: "Bernhardt, David L." <DBernhardt@BHFS.com>

Date: October 13, 2015 at 12:30:23 PM PDT

To: Jason Peltier <jason.peltier@sldmwa.org>, "Dennis Cardoza" (dcardoza@foley.com)" <dcardoza@foley.com>

Subject: Drought hearing transcript

Jason: Per your request.

David

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From: Tom Birmingham
Sent: Tuesday, November 3, 2015 9:03 AM
To: 'Rojewski, Cole'
CC: 'David Bernhardt'; 'Nelson, Damon'
Subject: Draft Appropriations Language
Attachments: Appropriations Amendment November 2015.docx

Cole,

It took more than a page, but attached is draft language you requested. This language is based primarily on language from Senator Feinstein's bill and language developed by her office. Therefore, I hope that she would not find it objectionable. Please let me know if you have any questions or would like to discuss the language.

Tom

SEC. ____ . DEFINITIONS.

In this Act:

(a) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(b) SALMONID BIOLOGICAL OPINION.—The term “salmonid biological opinion” means the National Marine Fisheries Service’s June 4, 2009 biological and conference opinion on the long-term operation of the Central Valley Project and the State Water Project, including the operative incidental take statement associated with that opinion.

(c) SECRETARIES.—The term “Secretaries” means—

- (1) the Secretary of Commerce; and
- (2) the Secretary of the Interior.

(d) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the December 15, 2008 Biological Opinion on the coordinated operation of the Central Valley Project and the State Water Project, including the operative incidental take statement associated with that opinion.

(e) STATE.—The term “State” means the State of California.

(f) STATE WATER PROJECT.—The term “State Water Project” means the water project described in chapter 5 of part 3 of division 6 of the California Water Code (sections 11550 et seq. (as in effect on the date of enactment of this Act)) and operated by the California Department of Water Resources.

SEC. ____ . OPERATIONS UNDER BIOLOGICAL OPINIONS

(a) In General – In implementing the provisions of the smelt biological opinion and the salmonid biological opinion, the Secretary of the Interior and the Secretary of Commerce shall manage reverse flow in the Old and Middle Rivers, as prescribed in the biological opinions, to minimize waters supply reductions for the Central Valley Project and the California State Water Project.

(b) Restrictions on Export Pumping Rates – Neither Secretary of the Interior nor the Secretary of Commerce shall restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the most negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 of the smelt biological opinion, absent a determination based on current scientific data that a less-negative reverse flow rate is reasonably required to avoid adverse impacts beyond those anticipated to occur through implementation of the smelt biological opinion or the salmonid biological opinion. Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the most negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be —

(1) explained in writing, including an explanation of the data examined and the connection between those data and the choice made; and

(2) posted on the United States Fish and Wildlife Service website within 72 hours, if practicable.

(c) Inflow/Export Ratio – The Secretary of Commerce shall adopt a 1:1 inflow to export ratio for the increment of increased flow in the San Joaquin River, as measured as a 3-day running average, during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange of water, unless the Secretary determines based on current scientific data that a 1:1 inflow-to-export ratio for that increment of increased flow will cause adverse impacts beyond those anticipated to occur through implementation of Action IV.2.1 of the salmonid biological opinion. Any determination to impose an export ratio for the increment of increased flow in the San Joaquin River resulting from the voluntary sale, transfer, or exchange of water more restrictive than 1:1 shall be —

(1) explained in writing, including an explanation of the data examined and the connection between those data and the choice made; and

(2) posted on the United States National Marine Fisheries Service website within 72 hours, if practicable.

SEC. ____ . AREA OF ORIGIN AND WATER RIGHTS PROTECTIONS.

(a) In general.— Nothing in this Act shall diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under California law. This Act does not limit or otherwise affect the application of California Water Code Sections 10505, 10505.5, 11128, 11460, and 11463, and Sections 12200 to 12220, inclusive.

SEC. ____ . NO REDIRECTED ADVERSE IMPACTS.

(a) The Secretaries shall not take any action authorized under this Act that would result in the involuntary reduction of water supply to individuals or districts that have in effect contracts for water with the State Water Project or the Central Valley Project, or other water users or purveyors organized under State law that obtain water based on other legal rights, as compared to the water supply that would be provided in the absence of action under this Act.

SEC. ____ . ALLOCATIONS FOR SACRAMENTO VALLEY WATER SERVICE CONTRACTORS.

(a) Definition.—In this section, the term “existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed” means any water service contractor

within the Shasta, Trinity, or Sacramento River division of the Central Valley Project that has in effect a water service contract on the date of enactment of this Act that provides water for irrigation.

(b) Allocations of Water.—

(1) DEFINITION OF YEAR TERMS.—In this subsection, the terms “Above Normal”, “Below Normal”, “Dry”, and “Wet”, with respect to a year, have the meanings given those terms in the Sacramento Valley Water Year Type (40–30–30) Index.

(2) ALLOCATIONS.—Subject to paragraph (3), subsection (c), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

(A) Not less than 100 percent of their contract quantities in a “Wet” year.

(B) Not less than 100 percent of their contract quantities in an “Above Normal” year.

(C) Not less than 100 percent of their contract quantities in a “Below Normal” year that is preceded by an “Above Normal” or a “Wet” year.

(D) Not less than 50 percent of their contract quantities in a “Dry” year that is preceded by a “Below Normal”, an “Above Normal”, or a “Wet” year.

(E) In all other years not identified in any of subparagraphs (A) through (D), not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent; provided, That nothing in this subparagraph shall preclude an allocation to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed that is greater than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors.

(3) CONDITIONS.—The Secretary’s actions under paragraph (2) shall be subject to—

(A) the priority of individuals or entities with Sacramento River water rights, including those with Sacramento River settlement contracts, that have priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;

(B) the obligation of the United States to make a substitute supply of water available to the San Joaquin River Exchange Contractors; and

(C) the obligation of the Secretary of the Interior to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4714).

(c) Protection of Municipal and Industrial Supplies.—

(1) EFFECT OF SUBSECTION.—Nothing in subsection (b)—

(A) modifies any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary;

(B) affects or limits the authority of the Secretary to adopt or modify municipal and industrial water shortage policies; or

(C) affects or limits the authority of the Secretary to implement municipal and industrial water shortage policies.

(2) EFFECT ON AMERICAN RIVER DIVISION.—Nothing in subsection (b) or the implementation by the Secretary of subsection (b) shall constrain, govern, or affect, directly or indirectly, the operations of the Central Valley Project's American River division or any deliveries from that division or a unit or facility of that division.

(d) Allocations to Contractors.—The allocations made pursuant to subsection (b) shall not affect allocations to Central Valley Project municipal and industrial water service contractors by increasing or decreasing allocations to such contractors, compared to allocations such contractors would have received absent subsection (b).

(e) No Effect on Allocations.—This section shall not—

(1) affect the allocation of water to contractors in the Friant division of the Central Valley Project; or

(2) result in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant division.

(f) Program for Water Rescheduling.—The Secretary shall direct the Commissioner of Reclamation to investigate and, if practicable, develop and implement a program to provide for the opportunity for existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed to reschedule water, provided for under their Central Valley Project contracts, from 1 year to the next, subject to the condition that the program is consistent with existing rescheduling guidelines as utilized by the Bureau of Reclamation for rescheduling water for Central Valley Project water service contractors that are located south of the Delta.

SEC. ____ . EFFECT ON EXISTING OBLIGATIONS.

Nothing in this Act—

(1) preempts any State law;

(2) affects or modifies any obligation of the Secretary of the Interior under section 8 of the Act of June 17, 1902 (32 Stat. 390, chapter 1093) to operate the Central Valley Project in conformance with State law; or

(3) affects or modifies any obligation under the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706).

From: Rojewski, Cole
Sent: Tuesday, November 3, 2015 9:38 AM
To: 'Tom Birmingham'
CC: 'David Bernhardt'; Nelson, Damon
Subject: RE: Draft Appropriations Language

Thanks Tom. Also I like your 4 pages....but once its put in legislative text it's more like 7-8 pages!

Let me take a look at this before we chat.

Cole

From: Tom Birmingham [mailto:tbirmingham@westlandswater.org]
Sent: Tuesday, November 03, 2015 11:03 AM
To: Rojewski, Cole
Cc: 'David Bernhardt'; Nelson, Damon
Subject: Draft Appropriations Language

Cole,

It took more than a page, but attached is draft language you requested. This language is based primarily on language from Senator Feinstein's bill and language developed by her office. Therefore, I hope that she would not find it objectionable. Please let me know if you have any questions or would like to discuss the language.

Tom

From: Sarah Woolf

Sent: Thursday, November 5, 2015 11:07 AM

To: David Longly Bernhardt; Johnny Amaral

Subject: Fwd: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Attachments: QFRs for Ms. Woolf from the 10-8-15 ENR Cmte Drought Hrg.docx; Untitled attachment 08645.htm

Ok I have failed. I have some stuff done on the first question which I will send later. Can you help me on the others. Sorry I say so long on this getting nothing done.

Sarah Woolf

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>

Date: October 14, 2015 at 2:33:19 PM PDT

To: "██████████@██████████.██████████" <██████████@██████████.██████████>

Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)"

<Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)"

<Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)"

<Rebecca_Bonner@energy.senate.gov>

Subject: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Good afternoon, Ms. Woolf. Attached are Questions for the Record which have been submitted to you by Chairman Murkowski and Senator Hirono from last Thursday's hearing regarding drought legislation. We respectfully request that you provide your responses to these questions by **Friday, November 6, 2015** for inclusion in the official hearing record.

Please provide the responses directly to me, and feel free to contact me if you have any questions. Thank you for your assistance with this request.

Sincerely,

Darla Ripchensky, PMP

Chief Clerk

U.S. Senate Committee on Energy and Natural Resources

304 Dirksen Senate Office Building

Washington, DC 20510

202.224.3607

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation
Questions for the Record Submitted to Ms. Sarah Woolf**

Questions from Chairman Lisa Murkowski

Question 1: What have been the impacts from the drought on you farm's operations?

Question 2: Why does the House bill give better direction to the agencies?

Question 3: What do you see as the deficiencies of S.1894?

Question 4: What provisions of the two bills do you see having the most in common?

Questions from Senator Mazie Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Question 2: I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing.

I would like to hear from you, given your personal experience with farming and your work with Water Wise, about your advice on how folks in other states should be thinking about long-term water use and conservation on an individual level. As we know from experience with the recycling and energy efficiency movements, it takes a while to change lifestyles.

Do you think it would be helpful if there was some kind of federal incentive available to individuals to conserve water and thus increase awareness of the impacts that our daily activities have on water sources? For example, changing federal programs to incentivize water conservation, efficiency, and reuse either when infrastructure is being built or retrofitted with federal money.

From: Bernhardt, David L.

Sent: Thursday, November 5, 2015 11:41 AM

To: Sarah Woolf

CC: Johnny Amaral

Subject: Re: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Yes, I can provide answers tomorrow.

On Nov 5, 2015, at 11:07 AM, Sarah Woolf <[REDACTED]@[REDACTED]> wrote:

Ok I have failed. I have some stuff done on the first question which I will send later. Can you help me on the others. Sorry I say so long on this getting nothing done.

Sarah Woolf

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>

Date: October 14, 2015 at 2:33:19 PM PDT

To: "[REDACTED]@[REDACTED]" <[REDACTED]@[REDACTED]>

Cc: "Kearney, Christopher (Energy)"

<Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)"

<Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)"

<Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)"

<Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)"

<Rebecca_Bonner@energy.senate.gov>

Subject: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Good afternoon, Ms. Woolf. Attached are Questions for the Record which have been submitted to you by Chairman Murkowski and Senator Hirono from last Thursday's hearing regarding drought legislation. We respectfully request that you provide your responses to these questions by **Friday, November 6, 2015** for inclusion in the official hearing record.

Please provide the responses directly to me, and feel free to contact me if you have any questions. Thank you for your assistance with this request.

Sincerely,

Darla Ripchensky, PMP

Chief Clerk

U.S. Senate Committee on Energy and Natural Resources

304 Dirksen Senate Office Building

Washington, DC 20510

202.224.3607

<QFRs for Ms. Woolf from the 10-8-15 ENR Cmte Drought Hrg.docx>

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From: Johnny Amaral

Sent: Thursday, November 5, 2015 11:53 AM

To: 'Bernhardt, David L.'; 'Sarah Woolf'

Subject: RE: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

This will have to be put in paragraph form, but here's my two cents on what direction to head.

Questions from Chairman Lisa Murkowski

Question 1: What have been the impacts from the drought on you farm's operations?

Question 2: Why does the House bill give better direction to the agencies?

H.R. 2898 directs the agencies to operate the projects at the upper limits allowable within the bi-ops

H.R. 2898 requires the agencies to move and capture water in the early storm events if there is no harm caused to protected species

H.R. 2898 provisions are PERMANENT

H.R. 2898 requires the agencies to work quickly to issue water transfer permits

Question 3: What do you see as the deficiencies of S.1894?

S. 1894 is a temporary proposal which "sunssets" at the end of the next water year or when the drought declaration is expired, whichever comes first.

S. 1894 proposes \$1.3 billion in new spending, without offsets

S. 1894 lacks the clear direction necessary to mandate more normalized operations of the projects.

Question 4: What provisions of the two bills do you see having the most in common?

Neither bill amends the Endangered Species Act

Both bills protect water rights

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]

Sent: Thursday, November 5, 2015 10:41 AM

To: Sarah Woolf

Cc: Johnny Amaral

Subject: Re: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Yes, I can provide answers tomorrow.

On Nov 5, 2015, at 11:07 AM, Sarah Woolf <[REDACTED]@[REDACTED]> wrote:

Ok I have failed. I have some stuff done on the first question which I will send later. Can you help me on the others. Sorry I say so long on this getting nothing done.

Sarah Woolf

Begin forwarded message:

From: "Ripchensky, Darla (Energy)" <Darla_Ripchensky@energy.senate.gov>
Date: October 14, 2015 at 2:33:19 PM PDT
To: "[REDACTED]@[REDACTED].[REDACTED]" <[REDACTED]@[REDACTED].[REDACTED]>
Cc: "Kearney, Christopher (Energy)" <Christopher_Kearney@energy.senate.gov>, "Stansbury, Melanie (Energy)" <Melanie_Stansbury@energy.senate.gov>, "Donnelly, Kellie (Energy)" <Kellie_Donnelly@energy.senate.gov>, "Huffnagle, Jason (Energy)" <Jason_Huffnagle@energy.senate.gov>, "Bonner, Rebecca (Energy)" <Rebecca_Bonner@energy.senate.gov>
Subject: Questions for the Record from the 10/8/15 ENR Cmte Hearing regarding Drought Legislation

Good afternoon, Ms. Woolf. Attached are Questions for the Record which have been submitted to you by Chairman Murkowski and Senator Hirono from last Thursday's hearing regarding drought legislation. We respectfully request that you provide your responses to these questions by **Friday, November 6, 2015** for inclusion in the official hearing record.

Please provide the responses directly to me, and feel free to contact me if you have any questions. Thank you for your assistance with this request.

Sincerely,

Darla Ripchensky, PMP
Chief Clerk
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510
202.224.3607

<QFRs for Ms. Woolf from the 10-8-15 ENR Cmte Drought Hrg.docx>

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From: Johnny Amaral

Sent: Monday, November 9, 2015 10:09 AM

To: Denny Rehberg; Dennis Cardoza; David Bernhardt; Catherine Karen

Subject: No call today

I'm with sacramento bee reporter Dale Kasler on the westside doing a drainage tour. Sorry for the short notice.

Best,

Johnny Amaral

From: Johnny Amaral
Sent: Monday, November 9, 2015 11:10 AM
To: Ryan A. 'Smith
Subject: Fwd: No call today

Sorry. Forgot to cc you

Best,

Johnny Amaral

Begin forwarded message:

From: "Johnny Amaral" <jamaral@westlandswater.org>
Date: November 9, 2015 at 9:09:12 AM PST
To: Denny Rehberg <drehberg@mercuryllc.com>, Dennis Cardoza <dcardoza@foley.com>, David Bernhardt <dbernhardt@bhfs.com>, Catherine Karen <ckaren@sidley.com>
Subject: No call today

I'm with sacramento bee reporter Dale Kasler on the westside doing a drainage tour. Sorry for the short notice.

Best,

Johnny Amaral

From: Smith, Ryan A.
Sent: Monday, November 9, 2015 3:04 PM
To: 'cole.rojewski@mail.house.gov'
CC: Tom Birmingham; Johnny Amaral; Bernhardt, David L.
Subject: Drainage

Cole,

Thanks for sharing this.

We do not believe that proposed language is necessary to protect Friant or any other party. The language that Tom has drafted provides sufficient protections. Moreover, the proposed Sec. 11 seeks to resolve a dispute concerning the source of water to be supplied to the exchange contractors. It has nothing to do with drainage. Consequently, we do not believe it should be included in the legislation. We also believe that the United States would also oppose this language.

We are, however, discussing with Interior revising the Mendota transfer language, and should have some language for your review hopefully in the next couple of days.

Note, we are also still working on finalizing the proposed Bishop letter, and will get that to you shortly.

Finally, please let me know if you have any time available on the 16th when you are back in town to meet with David and me to discuss the drainage settlement, particularly a couple of issues relating to scoring.

If you have any questions in the interim, please let me know.

Thanks again for all of your help.

Ryan Smith
Shareholder, Brownstein Hyatt Farber Schreck
1350 I Street, NW, Suite 510
Washington, DC 20005
(202)747-0507

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From: Rojewski, Cole
Sent: Monday, November 9, 2015 4:01 PM
To: Smith, Ryan A.
CC: Tom Birmingham; Johnny Amaral; Bernhardt, David L.
Subject: RE: Drainage

16th at 9am work?

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]
Sent: Monday, November 09, 2015 2:04 PM
To: Rojewski, Cole
Cc: Tom Birmingham; Johnny Amaral; Bernhardt, David L.
Subject: Drainage

Cole,

Thanks for sharing this.

We do not believe that proposed language is necessary to protect Friant or any other party. The language that Tom has drafted provides sufficient protections. Moreover, the proposed Sec. 11 seeks to resolve a dispute concerning the source of water to be supplied to the exchange contractors. It has nothing to do with drainage. Consequently, we do not believe it should be included in the legislation. We also believe that the United States would also oppose this language.

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Washington, DC 20005
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From: Smith, Ryan A.
Sent: Monday, November 9, 2015 8:57 PM
To: Rojewski, Cole
CC: Tom Birmingham; Johnny Amaral; Bernhardt, David L.
Subject: RE: Drainage

Yep, I will see you then.

Thanks

Ryan Smith
Shareholder, Brownstein Hyatt Farber Schreck
1350 I Street, NW, Suite 510
Washington, DC 20005
(202)747-0507

From: Rojewski, Cole
Sent: Monday, November 9, 2015 6:01 PM
To: Smith, Ryan A.
Cc: Tom Birmingham; Johnny Amaral; Bernhardt, David L.
Subject: RE: Drainage

16th at 9am work?

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]
Sent: Monday, November 09, 2015 2:04 PM
To: Rojewski, Cole
Cc: Tom Birmingham; Johnny Amaral; Bernhardt, David L.
Subject: Drainage

Cole,

Thanks for sharing this.

We do not believe that proposed language is necessary to protect Friant or any other party. The language that Tom has drafted provides sufficient protections. Moreover, the proposed Sec. 11 seeks to resolve a dispute concerning the source of water to be supplied to the exchange contractors. It has nothing to do with drainage. Consequently, we do not believe it should be included in the legislation. We also believe that the United States would also oppose this language.

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Note, we are also still working on finalizing the proposed Bishop letter, and will get that to you shortly.

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From: Johnny Amaral
Sent: Tuesday, November 10, 2015 10:33 AM
To: Shannon, Caitlin
CC: tbirmingham@westlandswater.org; David Bernhardt
Subject: Re: Ops language question

David,

I just talked to Caitlin. Please call me as soon as you can. 559-594-9453.

Best,

Johnny Amaral

On Nov 10, 2015, at 8:07 AM, Shannon, Caitlin <Caitlin.Shannon@mail.house.gov> wrote:

Hi Tom and JA,

Looking for some feedback. Please keep this internal.

Would the operations language from the December emergency bill actually produce water?

"Negative impact on the long term survival. - the term "negative impact on the long term survival" means to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species."

Thanks,
Caitlin

From: Johnny Amaral
Sent: Wednesday, November 11, 2015 3:02 PM
To: Cole Rojewski
Subject: follow up on Friant legislative request

Cole,

As you know, in the past 24 hours I have spoken with Dave Orth from North Friant and Central Friant Chairman Eric Borba, as well as our team in DC handling drainage (Ryan Smith and David Bernhardt). I know you're in San Francisco today, but if possible, I'd like to carve out a few minutes tomorrow to walk thru what weve discussed. Are you available at any time tomorrow before 1 pm?

From: Tom Birmingham
Sent: Thursday, November 12, 2015 6:44 AM
To: Bernhardt, David L.
Subject: Fwd: Sunset Provision

FYI

Sent from my iPhone

Begin forwarded message:

From: Tom Birmingham <tbirmingham@westlandswater.org>
Date: November 11, 2015 at 5:45:23 PM EST
To: "'Petersen, Scott'" <Scott.Petersen@mail.house.gov>
Cc: 'John Watts' <john_watts@feinstein.senate.gov>
Subject: Sunset Provision

Scott,

Based on Reclamation's concern that it cannot model an "average allocation" I suggest the following:

This title shall expire on October 1 of the water year following two consecutive years in which the Bureau of Reclamation is able to make available to all Central Valley Project irrigation water service or repayment contractors at least average annual deliveries, based on its modeling of the Central Valley Project operations over the period of hydrologic record after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and biological opinions pertaining to the Central Valley Project under applicable State or Federal law existing on the date of enactment of this title have been met.

Inasmuch as "annual average deliveries" is a term used in environmental review documents prepared by Reclamation and the modeling has already been prepared, this is a term Reclamation should be able to understand.

Tom

From: Tom Birmingham
Sent: Thursday, November 12, 2015 7:05 AM
To: 'Bernhardt, David L.'; 'Smith, Ryan A.'
Subject: Drinks with Bezdek

John and I are meeting at 6:00 p.m. at the Capital Hilton for drinks. (The location may change depending for John's convenience.) I hope you can join us, but I understand if you have other commitments, particularly at home.

From: Smith, Ryan A.
Sent: Thursday, November 12, 2015 8:09 AM
To: Tom Birmingham
CC: Bernhardt, David L.
Subject: Re: Drinks with Bezdek

I can make it, and look forward to seeing you.

Sent from my iPhone

On Nov 12, 2015, at 9:09 AM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

John and I are meeting at 6:00 p.m. at the Capital Hilton for drinks. (The location may change depending for John's convenience.) I hope you can join us, but I understand if you have other commitments, particularly at home.

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From: Tom Birmingham
Sent: Saturday, November 14, 2015 4:30 PM
To: 'Watts, John (Feinstein)'
CC: 'Bernhardt, David L.'
Subject: Language Provided to Kearny

John,

The following is the language provided by David Bernhardt to Chris Kearny:

SEC. ____ . OPERATIONS UNDER BIOLOGICAL OPINIONS

(a) In General – In implementing the provisions of the smelt biological opinion and the salmonid biological opinion, the Secretary of the Interior the Secretary of Commerce shall manage reverse flow in the Old and Middle Rivers, as prescribed in the biological opinions, to minimize waters supply reductions for the Central Valley Project and the California State Water Project.

(b) Restrictions on Export Pumping Rates – Neither Secretary of the Interior nor the Secretary of Commerce shall restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers that is less negative than the most negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 of the smelt biological opinion, absent a determination based on current scientific data that a less-negative reverse flow rate is reasonably required to avoid adverse impacts beyond those anticipated to occur through implementation of the smelt biological opinion or the salmonid biological opinion. Any determination to restrict export pumping rates to achieve a reverse flow rate in Old and Middle Rivers less negative than the most negative reverse flow rate described in Reasonable and Prudent Alternative Component 1 and Component 2 shall be —

(1) explained in writing, including an explanation of the data examined and the connection between those data and the choice made; and

(2) posted on the United States Fish and Wildlife Service website within 72 hours, if practicable.

(c) Reverse OMR Flow in Excess of -5000 Cubic Feet per Second – During the period from December 1 through June 30, the Secretaries may permit export pumping rates to achieve a reverse flow in Old and Middle Rivers up to -7500 cubic feet per second if the Secretaries determine from real-time monitoring data that reverse flow in Old and Middle Rivers more negative than -5000 cubic feet per second will not cause adverse impacts beyond those anticipated to occur through implementation of the smelt biological opinion or the salmonid biological opinion.

(d) Inflow/Export Ratio – The Secretary of Commerce shall adopt a 1:1 inflow to export ratio for the increment of increased flow in the San Joaquin River, as measured as a 3-day running average, during the period from April 1 through May 31, that results from the voluntary sale, transfer, or exchange of water, unless the Secretary determines based on current scientific data that a 1:1 inflow-to-export ratio for that increment of increased flow will cause adverse impacts beyond those anticipated to occur through implementation of Action IV.2.1 of the salmonid biological opinion. Any determination to impose an export ratio for the increment of increased flow in the San Joaquin River resulting from the voluntary sale, transfer, or exchange of water more restrictive than 1:1 shall be —

(1) explained in writing, including an explanation of the data examined and the connection between those data and the choice made; and

(2) posted on the United States National Marine Fisheries Service website within 72 hours, if practicable.

From: Tom Birmingham
Sent: Sunday, November 15, 2015 1:01 PM
To: 'Rojewski, Cole'
CC: 'Johnny Amaral'; 'Bernhardt, David L.'
Subject: FW: Sunset Language
Attachments: 3946_001.pdf

Cole,

I did draft this language at the request of Senator Feinstein. In a recent meeting, I asserted to Senator Feinstein that any drought legislation needs to extend for a period longer than her bill proposes. She said she believes the legislation needs to be tied to the "drought" and asked me to develop a concept that would be related to Reclamation's expertise in determining when the drought is over. I drafted this language and sent it to John Watts and then Scott Petersen, at John's request. I don't know if Senator Feinstein has reacted to the proposed language.

According to CALSIM II modeling analysis, "average annual deliveries" for south-of-Delta ag service contractors are approximately 850,000 acre-feet, or 44% of contract totals.

Please understand, that I drafted this language as a drafting service for Senator Feinstein. The language is not a Westlands proposal, and whether Westlands would support this language would depend on many variables, particularly, what else is in the bill.

Tom

From: Cole Rojewski [mailto: [REDACTED]@ [REDACTED]]
Sent: Saturday, November 14, 2015 4:29 PM
To: tbirmingham@westlandseater.org; David L. Bernhardt <DBernhardt@BHFS.com>
Subject: Fwd: Sunset Language

See below. Got your email wrong.

Begin forwarded message:

From: Cole Rojewski < [REDACTED]@ [REDACTED] >
Date: November 14, 2015 at 7:22:35 PM EST
To: "David L. Bernhardt" <DBernhardt@BHFS.com>, "tbirmingham@westlandseater.org" <tbirmingham@westlandseater.org>
Subject: Sunset Language

I'm not sure if you drafted this. But what are your thoughts on this language.

Cole

Proposed Sunset provision language

This title shall expire on October 1 of the water year following two consecutive years in which the Bureau of Reclamation is able to make available to all Central Valley Project irrigation water service or repayment contractors at least average annual deliveries, based on its modeling of the Central Valley Project operations over the period of hydrologic record after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and biological opinions pertaining to the Central Valley Project under applicable State or Federal law existing on the date of enactment of this title have been met.

44% S. of Delta
70% N. of Delta

Conger

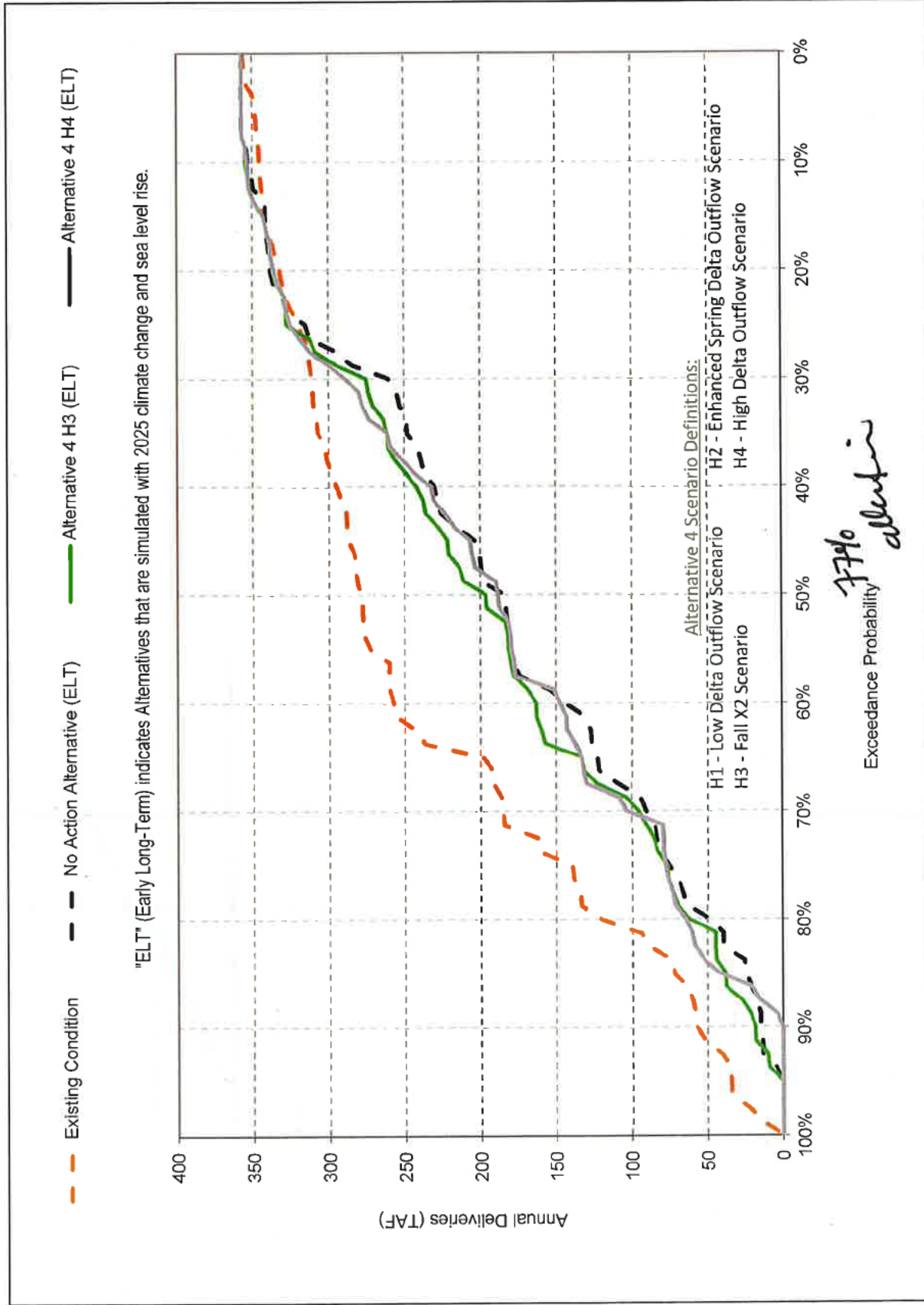


Figure 4.3.1-22

Annual CVP North of Delta Agricultural Water Service Contract Deliveries for Alternative 4A

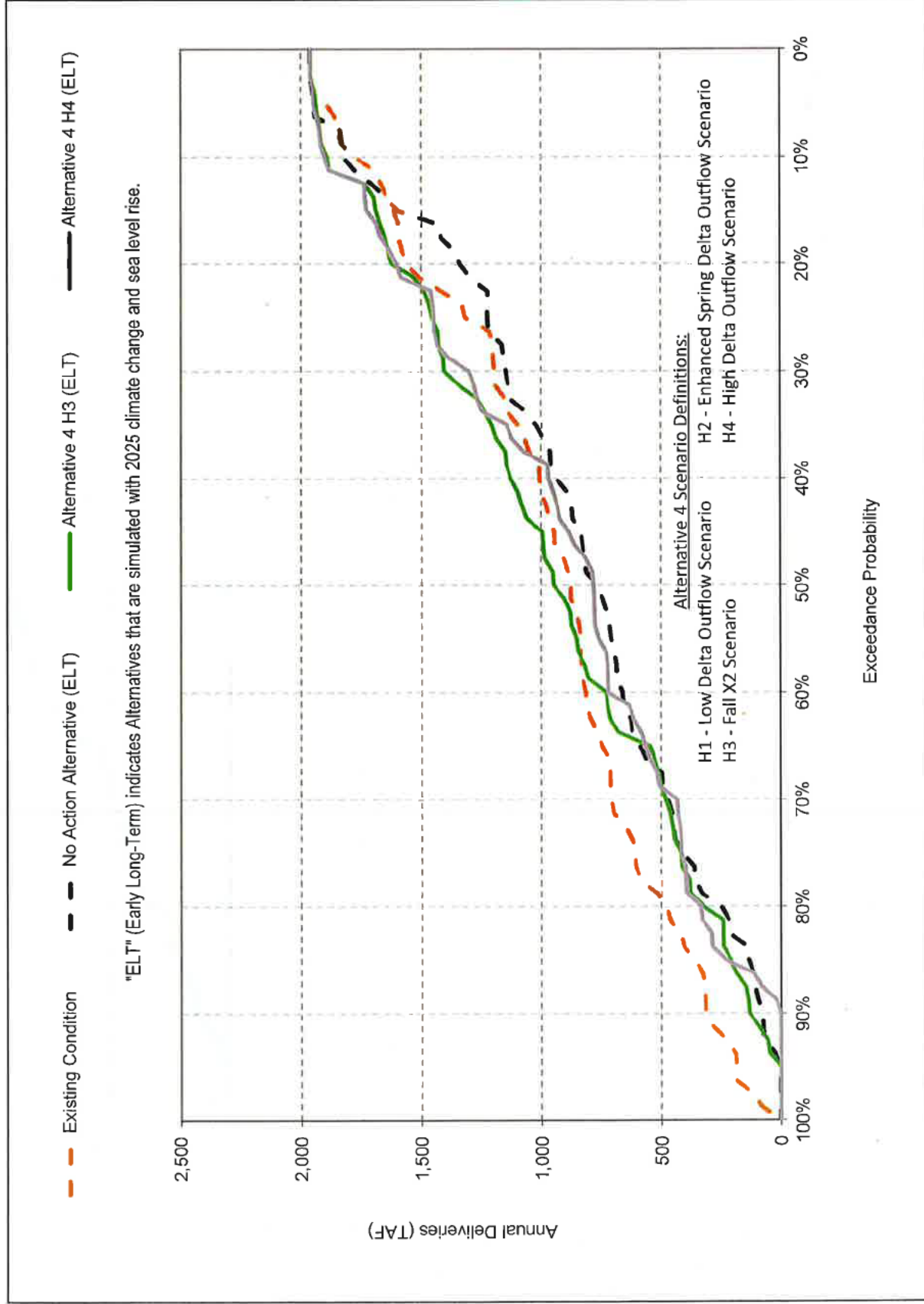


Figure 4.3.1-23

Annual CVP South of Delta Agricultural Water Service Contract Deliveries for Alternative 4A

WFO studies

2022-2023

Table 5-4. Water Supply Summary Table

Location	Parameter	Units	Existing Condition	No Action Alternative (LLT)	Alternative 1A, 1B, 1C (LLT)	Alternative 2A, 2B, 2C (LLT)	Alternative 3 (LLT)	Alternative 5 (LLT)	Alternative 6A, 6B, 6C (LLT)	Alternative 7 (LLT)	Alternative 8 (LLT)	Alternative 9 (LLT)
Trinity Lake	End of Sep Storage	TAF	1,393	1,163	1,125	1,132	1,130	1,143	1,184	1,160	1,183	1,165
Shasta Lake	End of Sep Storage	TAF	2,723	2,242	2,284	2,180	2,284	2,189	2,314	2,211	2,284	2,235
Lake Oroville	End of Sep Storage	TAF	2,054	1,408	1,762	1,486	1,756	1,537	1,640	1,642	1,537	1,405
Folsom Lake	End of Sep Storage	TAF	525	379	400	371	397	363	399	369	373	390
San Luis Reservoir	End of Sep Storage	TAF	592	492	630	480	628	424	304	318	168	446
CVP North-of-Delta AG Deliveries	Annual (Mar-Feb)	TAF	234	161	179	164	178	162	142	136	132	141
CVP South-of-Delta AG Deliveries	Annual (Mar-Feb)	TAF	967	727	956	830	951	823	573	577	486	705
CVP North-of-Delta M&I Deliveries	Annual (Mar-Feb)	TAF	210	381	384	382	384	380	385	380	373	376
CVP South-of-Delta M&I Deliveries	Annual (Mar-Feb)	TAF	118	105	114	109	115	109	90	90	61	105
CVP Settlement Contractors Deliveries	Dry And Critical Annual (Mar-Feb)	TAF	1,823	1,770	1,767	1,763	1,766	1,768	1,788	1,759	1,730	1,769
CVP Exchange Contractors Deliveries	Dry And Critical Annual (Mar-Feb)	TAF	814	814	814	814	814	814	806	804	805	814
CVP Level 2 Refuge Deliveries	Dry And Critical Annual (Mar-Feb)	TAF	397	376	372	366	378	373	326	326	290	381
Total CVP South-of-Delta Deliveries (Including AG, M&I, Exchange & Refuge)	Annual (Mar-Feb)	TAF	2,233	1,953	2,190	2,058	2,188	2,053	1,764	1,766	1,631	1,934
Total CVP Deliveries (Including AG, M&I, Settlement, Exchange & Refuge)	Annual (Mar-Feb)	TAF	4,649	4,677	4,740	4,585	4,735	4,577	4,275	4,256	4,094	4,433
Total SWP Contractors Deliveries (Including FRSA, Table A, A56 And A21)	Annual (Jan-Dec)	TAF	3,756	3,342	4,112	3,854	4,027	3,596	2,904	2,920	2,352	3,311
SWP South-of-Delta Contractors Deliveries (Including Table A, A56 And A21)	Annual (Jan-Dec)	TAF	2,707	2,337	3,088	2,834	3,005	2,583	1,902	1,918	1,430	2,302
Total SWP Contractors Table A Deliveries (Including A56)	Annual (Jan-Dec)	TAF	2,629	2,365	2,931	2,764	2,885	2,587	1,887	1,951	1,430	2,349
SWP Contractors South-of-Delta Table A Deliveries (Including A56)	Annual (Jan-Dec)	TAF	2,576	2,301	2,851	2,687	2,806	2,516	1,833	1,895	1,391	2,281
SWP Contractors A21 Deliveries	Annual (Jan-Dec)	TAF	158	47	248	157	210	79	81	35	48	33
SWP FRSA Deliveries	Dry And Critical Annual (Jan-Dec)	TAF	899	845	856	857	856	848	862	856	729	847
Delta Outflow	Annual (Oct-Sep)	TAF	15,533	16,282	15,210	15,638	15,305	15,933	16,916	16,965	17,727	16,339
Delta Exports	Annual (Oct-Sep)	TAF	5,144	4,441	5,456	5,068	5,371	4,766	3,758	3,754	3,098	4,377
Exports At North Delta Diversion Intakes	Annual (Oct-Sep)	%	0	0	50	58	35	25	100	62	70	0
Exports At South Delta Intakes	Annual (Oct-Sep)	%	100	100	50	42	65	75	0	38	30	100

Note: "LLT" (Late Long-Term) Indicates Alternatives That are Simulated with 2060 Climate Change and Sea Level Rise.

From: Johnny Amaral

Sent: Monday, November 16, 2015 8:18 AM

To: Ed Manning; Carolyn Jensen; Mike Burns; Ryan A. ' 'Smith; Denny Rehberg; Dennis Cardoza; Catherine Karen; David Bernhardt

Subject: Sorry to do this to you all

But I have a meeting this morning with the Fresno county Sheriff's department regarding our Mendota homeless issue. I have to cancel today's calls again.

Best,

Johnny Amaral

From: Karen, Catherine

Sent: Monday, November 16, 2015 8:20 AM

To: Johnny Amaral; Ed Manning; Carolyn Jensen; Mike Burns; Ryan A. ' 'Smith; Denny Rehberg; Dennis Cardoza; David Bernhardt

Subject: RE: Sorry to do this to you all

Understood. And good luck - wear you Kevlar.

CATHERINE KAREN
Counsel

Sidley Austin LLP
+1 202 736 8368
ckaren@sidley.com

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]

Sent: Monday, November 16, 2015 10:18 AM

To: Ed Manning; Carolyn Jensen; Mike Burns; Ryan A. ' 'Smith; Denny Rehberg; Dennis Cardoza; Karen, Catherine; David Bernhardt

Subject: Sorry to do this to you all

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Best,

Johnny Amaral

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If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: DCardoza@foley.com

Sent: Monday, November 16, 2015 10:06 AM

To: Johnny Amaral

CC: Ed Manning; Carolyn Jensen; Mike Burns; Ryan A. 'Smith; Denny Rehberg; Catherine Karen; David Bernhardt

Subject: Re: Sorry to do this to you all

Understandable. As we are on deadline I would really like to touch base before Friday if possible. Dennis

Congressman Dennis A. Cardoza ret.

Foley & Lardner LLP

Suite 600

3000 K Street, NW<x-apple-data-detectors://0/0>

Washington, DC 20007-5109<x-apple-data-detectors://0/0>

Phone: 202.295-4015

Fax: 202.672.5399<tel:202.672.5399>

Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On Nov 16, 2015, at 10:18 AM, Johnny Amaral <jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>> wrote:

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Best,

Johnny Amaral

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From: Dennis Nuxoll

Sent: Tuesday, November 17, 2015 12:54 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'Joseph Raeder'; 'Johnny Amaral'; 'DCardoza@foley.com'; 'Bernhardt, David L.'

Subject: Conf call Thursday 330 eastern?

Obviously lots of action has occurred over the last few weeks since we last spoke. I think its important for all of us to meet to review where things stand, and coordinate for recess and Dec.

If this time slot works I'll send out at a mtg notice with conf call #

Dennis Nuxoll

Vice President, Federal Government Affairs

Western Growers

1776 Eye Street NW, Suite 255

Washington, DC 20006

Tel: 202.296.0191 · Cell: 202 701 6744 Fax: 202.296.0206 ·

Email: dnuxoll@wga.com

Website: www.wga.com

From: MacMillan, Anne

Sent: Tuesday, November 17, 2015 1:06 PM

To: Dennis Nuxoll

CC: Nancy Williams; Joseph Raeder; Johnny Amaral; DCardoza@foley.com; Bernhardt, David L.

Subject: Re: Conf call Thursday 330 eastern?

Ok with me

On Nov 17, 2015, at 2:53 PM, Dennis Nuxoll <dnuxoll@WGA.COM> wrote:

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Email: dnuxoll@wga.com

Website: www.wga.com

From: Nancy Williams
Sent: Tuesday, November 17, 2015 1:09 PM
To: 'MacMillan, Anne'; 'Dennis Nuxoll'
CC: 'Joseph Raeder'; 'Johnny Amaral'; DCardoza@foley.com; 'Bernhardt, David L.'
Subject: RE: Conf call Thursday 330 eastern?

Ok for me also

From: MacMillan, Anne [mailto:Anne.MacMillan@wonderful.com]
Sent: Tuesday, November 17, 2015 3:06 PM
To: Dennis Nuxoll <dnuxoll@WGA.COM>
Cc: Nancy Williams <nwilliams@swaconsult.com>; Joseph Raeder <JRaeder@tfgnet.com>; Johnny Amaral <jamaral@westlandswater.org>; DCardoza@foley.com; Bernhardt, David L. <DBernhardt@BHFS.com>
Subject: Re: Conf call Thursday 330 eastern?

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Email: dnuxoll@wga.com
Website: www.wga.com

From: Noles, Holly A. on behalf of Bernhardt, David L. [DBernhardt@BHFS.com]
Sent: Tuesday, November 17, 2015 1:12 PM
To: 'Nancy Williams'; 'MacMillan, Anne'; 'Dennis Nuxoll'
CC: 'Joseph Raeder'; 'Johnny Amaral'; DCardoza@foley.com; Bernhardt, David L.
Subject: RE: Conf call Thursday 330 eastern?

That time works for David

Holly A. Noles

Executive Assistant

Brownstein Hyatt Farber Schreck, LLP

1350 I Street, NW, Suite 510

Washington, DC 20005

202.652.2352 tel

HNOLES@bhfs.com

From: Nancy Williams [mailto:nwilliams@swaconsult.com]
Sent: Tuesday, November 17, 2015 3:09 PM
To: 'MacMillan, Anne'; 'Dennis Nuxoll'
Cc: 'Joseph Raeder'; 'Johnny Amaral'; DCardoza@foley.com; Bernhardt, David L.
Subject: RE: Conf call Thursday 330 eastern?

Ok for me also

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Sent: Tuesday, November 17, 2015 3:06 PM
To: Dennis Nuxoll <dnuxoll@WGA.COM>
Cc: Nancy Williams <nwilliams@swaconsult.com>; Joseph Raeder <JRaeder@tfgnet.com>; Johnny Amaral <jamaral@westlandswater.org>; DCardoza@foley.com; Bernhardt, David L. <DBernhardt@BHFS.com>
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From: Joe Raeder

Sent: Tuesday, November 17, 2015 1:34 PM

To: Dennis Nuxoll; 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; 'Johnny Amaral'; 'DCardoza@foley.com'; 'Bernhardt, David L.'

Subject: RE: Conf call Thursday 330 eastern?

I will be late. I have a 2:45 appt that should end about 3:30 or so. I'll join when I can.

From: Dennis Nuxoll [mailto:dnuxoll@WGA.COM]

Sent: Tuesday, November 17, 2015 2:54 PM

To: 'Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com)'; 'Nancy Williams'; Joe Raeder; 'Johnny Amaral'; 'DCardoza@foley.com'; 'Bernhardt, David L.'

Subject: Conf call Thursday 330 eastern?

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Email: dnuxoll@wga.com

Website: www.wga.com

[Spam](#)

[Phish/Fraud](#)

[Not spam](#)

[Forget previous vote](#)

From: DCardoza@foley.com
Sent: Tuesday, November 17, 2015 1:49 PM
To: Dennis Nuxoll
CC: Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com); Nancy Williams; Joseph Raeder; Johnny Amaral; Bernhardt, David L.
Subject: Re: Conf call Thursday 330 eastern?

I will try. Still dealing with Kathies issues.

Congressman Dennis A. Cardoza ret.
Foley & Lardner LLP
Suite 600
3000 K Street, NW<x-apple-data-detectors://0/0>
Washington, DC 20007-5109<x-apple-data-detectors://0/0>
Phone: 202.295-4015
Fax: 202.672.5399<tel:202.672.5399>
Email: dcardoza@foley.com<<mailto:dcardoza@foley.com>>

Sent from my iPhone

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On Nov 17, 2015, at 2:53 PM, Dennis Nuxoll <dnuxoll@WGA.COM<<mailto:dnuxoll@wga.com>>> wrote:

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From: Johnny Amaral

Sent: Tuesday, November 17, 2015 3:02 PM

To: Dennis Nuxoll

CC: Anne MacMillan - Roll Global (Anne.MacMillan@wonderful.com); Nancy Williams; Joseph Raeder; DCardoza@foley.com; Bernhardt, David L.

Subject: Re: Conf call Thursday 330 eastern?

Works for me

Best,

Johnny Amaral

On Nov 17, 2015, at 11:55 AM, Dennis Nuxoll <dnuxoll@WGA.COM> wrote:

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Email: dnuxoll@wga.com

Website: www.wga.com

From: Bernhardt, David L.
Sent: Tuesday, November 24, 2015 5:35 PM
To: Thomas W. (Tom) Birmingham Esq.
Subject: Lombardi's cell

Cell-202-657-2831

David Bernhardt

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From: Johnny Amaral
Sent: Monday, November 30, 2015 9:24 AM
To: Harris, Molly
Subject: Re: Happy Thanksgiving

Myself, Tom, and David Bernhardt

Best,

Johnny Amaral

> On Nov 30, 2015, at 9:01 AM, Harris, Molly <Molly.Harris@mail.house.gov> wrote:

>

> I forgot to ask, who else will be attending besides yourself?

>

> Thanks,

>

> Molly

>

> -----Original Message-----

> From: Harris, Molly

> Sent: Saturday, November 28, 2015 11:28 AM

> To: Johnny Amaral

> Subject: Re: Happy Thanksgiving

>

> Perfect sorry for the errors! My phone is a little spazzy!

>

> Thanks,

>

> Molly

>

> Sent from my iPhone

>

>> On Nov 28, 2015, at 9:49 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>>

>>

>> Yes. We will take it

>>

>> Best,

>>

>> Johnny Amaral

>>

>>

>>> On Nov 27, 2015, at 7:36 PM, Harris, Molly <Molly.Harris@mail.house.gov> wrote:

>>>

>>> Johnny,

>>>

>>> Johnny,

>>>

>>> How does 10:15am on Wednesday sound? Let me know, if not I have other options.

>>>

>>> Molly

>>>

>>>

>>>

>>> Sent from my iPhone

>>>

>>>> On Nov 27, 2015, at 1:12 PM, Rojewski, Cole <Cole.Rojewski@mail.house.gov> wrote:

>>>>
>>>> Let's shoot for Wednesday. Molly will you please find a time?
>>>>
>>>> Thank you,
>>>> Cole
>>>>
>>>> -----Original Message-----
>>>> From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
>>>> Sent: Friday, November 27, 2015 10:05 AM
>>>> To: Rojewski, Cole
>>>> Subject: Happy Thanksgiving
>>>>
>>>>
>>>> Cole,
>>>>
>>>> Tom and I will be in DC next week to be available to assist in whatever way we can on the water legislation effort. Do you and David have time on Tuesday or Wednesday for us to swing by for a quick meeting?
>>>>
>>>>
>>>>
>>>> Best,
>>>>
>>>> Johnny Amaral
>>

From: Johnny Amaral
Sent: Tuesday, December 1, 2015 5:27 AM
To: David Bernhardt
Subject: Meeting at 10 am with valadao

Best,

Johnny Amaral

From: Lombardi, Kyle

Sent: Tuesday, December 1, 2015 6:15 PM

To: 'tbirmingham@westlandswater.org'; Bernhardt, David L.; 'Johnny Amaral'

CC: Foley, Ian

Subject: CRITICAL & TIMELY

Attachments: Cal Drought House Ops Language Counteroffer Admin edits.docx

Importance: High

CONFIDENTIAL

Tom, David, and Johnny –

Attached is the response from John Bezdek with the Interior Department to the House counterproposal from November 25. Bezdek told House GOP negotiators on the phone this evening that, with some caveats – see the attachment, the Administration would not oppose this language. However, we do not have that in writing.

Please review this language and provide your thoughts.

Also, please let me know what you think on the following:

1. Do you recommend accepting the Bezdek language with all his edits?
2. If not, what edits do you not like or would be deal breakers?
3. Should we keep the 56 cumulative days or substitute in the Delta outflow standard that was negotiated on Monday?
4. Most importantly, what is your best estimate on the amount water this language would get us?

Thanks,

Kyle

Kyle Lombardi
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

www.majorityleader.gov

Kyle Lombardi
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

www.majorityleader.gov

Updated 11-25-15 @ 11:30

To: Senate and House California Drought Legislative Staff
Fr: DOI and NOAA
Re: Technical Drafting Assistance on Current Legislative Language
Date: December 1, 2015

Major Overall Observations

The Departments, together with the State of California, are anticipating a third difficult year of drought conditions that will pose continued significant challenges from an operations perspective. We are therefore placing high priority on several parallel topics which we believe will provide important short and long-term benefits to a reliable water supply and resilient environment.

1. 2016 operations. We are preparing for a very hard year, with advancing planning work for 2016 operations, examining a wide range of potential hydrology, lessons learned from 2014 and 2015 operations, modelling refinements and stakeholder engagements. This work will lead into an intense season of real time management challenges as we seek to maximize efficiencies in meeting the multiple demands upon the system;

2. Cal Water Fix. We seek to fulfill our mutual commits with the State on completing the NEPA and ESA reviews of the Governor's Cal Water Fix over the course of the year; and

3. Adaptive Management. We seek to strengthening significantly the overall adaptive management program to support better water and habitat investments and operations to achieve the purposes of the CVP and the SWP and to lay a stronger foundation for operations of dual conveyance, once it comes on line in the outyears. The water contractors have represented to us that this is also a top priority for them.

We are deeply concerned that the Cal drought legislation will from an operational perspective impose significant analytical requirements that will entirely or significantly displace these priorities. We are also very mindful of the prospects of a fresh round of litigation that can further distract resources and focus.

Specific Legislative Comments

Attached are edits and comments on the current text of selective sections of the California drought legislation which are provided as a technical drafting service. As a technical drafting matter, we do not believe the following amends the ESA or the BiOps:

“ . . . to maximize Central Valley project and State Water Project water supplies, manage export pumping rates to achieve a reverse OMR flow rate of -5,000 cubic feet per second unless existing information or that developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude, using the best available commercial and scientific data, that a less negative OMR flow rate is necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions.”

However, our final policy views on this language are dependent upon a number of factors, including:

1) Continued opposition to section 306 as authorizing actions outside of the BO;

2) We strongly recommend inclusion of a ESA savings clause that makes it clear if there is a conflict between this statutory language and the requirements of the ESA, the ESA prevails and nothing herein amends the ESA or existing BO's;

3) Inclusion of a an express statement on the length of time these provisions are in effect; and

4) Whether there are other provisions in the bill that are objectionable.

5) The term “Biological Opinions” needs to be defined to include successor opinions so that the agencies are able to respond to changing conditions as required by the ESA.

Specific Comments on Counter-Offer Language

(e) SCIENTIFICALLY SUPPORTED IMPLEMENTATION OF OMR FLOW REQUIREMENTS.—In implementing the provisions of the smelt biological opinion, the salmonid biological opinion, or any successor biological opinions or court order, the Secretary of the Interior and the Secretary of Commerce shall manage Old and Middle Rivers, as prescribed in the biological opinion, to otherwise maximize water supplies for the Central Valley Project and State Water Project. Pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall—

Commented [A1]: The BiOps do not by definition seek to maximize water deliveries; they prescribe operational parameters to avoid jeopardy. This edit is intended to minimize the likelihood that this legislative language will be interpreted literally.

(1) consider the relevant provisions of the biological opinions or any successor biological opinions;

Commented [A2]: Recommend that the definition of the term "biological opinion(s)" includes successor opinions so that the concept applies throughout.

(2) to maximize Central Valley project and State Water Project water supplies, manage export pumping rates to achieve a reverse OMR flow rate of –5,000 cubic feet per second unless existing information or that developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude, using the best available commercial and scientific data, that a less negative OMR flow rate is necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions. If information available to the Secretary indicates that a reverse OMR flow rate more negative than –5,000 cubic feet per second can be established using the best available commercial and scientific data without additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions..., the Secretary shall manage export pumping rates to achieve that more negative OMR flow rate;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of OMR reverse flow rates, including—

(A) whether targeted real-time fish monitoring pursuant to this section, including monitoring in the vicinity of Station 902, indicates that additional adverse effects on listed species beyond the range of the effects anticipate to occur to the

Commented [A3]: Do not limit monitoring to Old River; the monitoring regime is broader.

listed species for the duration of the smelt or salmonid biological opinions ~~is likely to occur; is imminent;~~ and

(B) whether near-term forecasts with available ~~salvage~~ models show under prevailing conditions that OMR flow of $-5,000$ cubic feet per second or higher ~~are likely to will~~ cause additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data--;

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than $-5,000$ cubic feet per second is necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data. , including an explanation of the data examined and the connection between those data and the choice made, after considering—

(A) the distribution of Delta smelt throughout the Delta;

(B) the potential effects of documented, quantified entrainment on subsequent Delta smelt abundance;

(C) the water temperature;

(D) other significant factors relevant to the determination;

(E) turbidity; and

(F) whether any alternative measures could have a substantially lesser water supply impact; and

(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the most negative limit in the biological opinion if the most negative limit in the biological opinion is more negative than $-5,000$ cubic feet per second.

Commented [A4]: In season real time management in fact uses a variety of time-scales from hourly to daily to weekly to monthly, depending upon the variable being managed. The concept of "imminent" obscures this fact and suggests that only short-term decision-making is permissible.

Commented [A5]: Do not limited this exclusively to salvage models as others are also used.

Updated 11-25-15 @ 11:30

(6) The analyses and documentation required by this section shall be comparable to the depth and complexity as is appropriate for real time decision-making. This section shall not be interpreted to require a level of administrative findings and documentation that could impede the execution of effective real time adaptive management, as is generally provided for in section 307(g), below.

(f) CONSTRUCTION.- The Secretaries are authorized to implement subsection (e) consistent with and building upon previous operations in the 2014 and 2015 water years and utilize the results of monitoring through Early Warning Surveys to make real-time operational decisions consistent with the current applicable biological opinion.

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~~SEC. 306. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.~~

~~The Secretaries shall, consistent with applicable laws (including regulations) —~~

~~(1) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream of the Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;~~

~~(2) manage reverse flow in the Old and Middle Rivers at =6,100 cubic feet per second if real time monitoring indicates that flows of =6,100 cubic feet per second or more negative can be established for specific periods without causing additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data., or if real time monitoring does not support flows of =6,100 cubic feet per second than manage OMR flows at 5,000 cubic feet per second subject to section 103(e) (3) and (4); and~~

~~(3) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.~~

SEC. 307. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF THE WATER YEAR.

(a) IN GENERAL.—Consistent with avoiding additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data in the short term and resulting other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative OMR flows ~~at -7,500~~ in excess of -5000 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for 56 cumulative days after October 1 as described in subsection (c) to capture peak flows during storm events during a sustained drought.

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(b) DAYS OF TEMPORARY OPERATIONAL FLEXIBILITY.—The temporary operational flexibility described in subsection (a) shall be authorized on days that the California Department of Water Resources determines the (net Delta outflow index is at or above 13,000 cfs) ~~daily average river flow of the Sacramento River is at, or above, 17,000 cubic feet per second as measured at the Sacramento River at Freeport gauge maintained by the United States Geologic Survey.~~

(c) COMPLIANCE WITH ENDANGERED SPECIES ACT AUTHORIZATIONS.—In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species under the applicable for the duration of the ~~smelt or salmonid biological opinions using the best available commercial and scientific data, provided that the requirements imposed do not reduce water supplies available for the Central Valley Project and the State Water Project.~~

Commented [A6]: This clause appears to "lock in" a level of water deliveries irrespective of conditions and is therefore inconsistent with ESA and CWA fundamentals

(d) OTHER ENVIRONMENTAL PROTECTIONS.—

(1) STATE LAW.—The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under State law.

(2) FIRST SEDIMENT FLUSH.—During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than $-5,000$ cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) APPLICABILITY OF OPINION.—This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary of the Interior and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period if they can be accomplished consistent with section 3405(a)(1)(H) of the Central Valley Project Improvement Act and other applicable law. Water transfers solely or exclusively through the State Water Project are not required to be consistent with section 3405(a)(1)(H) of the Central Valley Project Improvement Act.

(4) MONITORING.—During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake ~~a~~ expanded monitoring program and other data gathering to improve the efficiency of operations from conservation and water supply perspectives, to ensure incidental take levels are not exceeded, and to identify potential negative impacts and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(e) TECHNICAL ADJUSTMENTS TO TARGET PERIOD.—If, before temporary operational flexibility has been implemented on 56 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in OMR flows at or below $-5,000$ cubic feet per second during days of temporary operational flexibility

as defined in subsection (c), the duration of such operation shall not be counted toward the 56 cumulative days specified in subsection (a).

(f) EMERGENCY CONSULTATION; EFFECT ON RUNNING AVERAGES.—

(1) If necessary to implement the provisions of this section, the Commissioner is authorized to take any action necessary to implement this section for up to 56 cumulative days. If during the 56 cumulative days the Commissioner determines that actions necessary to implement this section will exceed 56 days, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05 of title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions—

(A) solely for extending beyond the 56 cumulative days for additional days of temporary operational flexibility—

(i) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c), (d) and (e); and

(ii) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily OMR flow requirements under the biological opinions, or

(B) for other adjustments to operating criteria or to take other urgent actions to address water supply shortages for the least amount of time or volume of diversion necessary as determined by the Commissioner.

(2) Following the conclusion of the 56 cumulative days of temporary operational flexibility, or the extended number of days covered by the emergency consultation procedures, the Commissioner shall not reinitiate consultation on these adjusted operations, and no mitigation shall be required, if the effects on listed fish species of these operations under this section remain within the range of those authorized under the Endangered Species Act of 1973 (16 U.S.C. 1531

Updated 11-25-15 @ 11:30

et seq.). If the Commissioner reinitiates consultation, no mitigation measures shall be required.

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CONFIDENTIAL

From: Tom Birmingham
Sent: Tuesday, December 1, 2015 7:57 PM
To: 'Lombardi, Kyle'
CC: 'Foley, Ian'; 'Bernhardt, David L.'; 'Johnny Amaral'
Subject: RE: CRITICAL & TIMELY
Attachments: Cal Drought House Ops Language Counteroffer Admin edits.docx

Confidential

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Cc: Foley, Ian <Ian.Foley@mail.house.gov>
Subject: CRITICAL & TIMELY
Importance: High

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Updated 11-25-15 @ 11:30

To: Senate and House California Drought Legislative Staff
Fr: DOI and NOAA
Re: Technical Drafting Assistance on Current Legislative Language
Date: December 1, 2015

Major Overall Observations

The Departments, together with the State of California, are anticipating a third difficult year of drought conditions that will pose continued significant challenges from an operations perspective. We are therefore placing high priority on several parallel topics which we believe will provide important short and long-term benefits to a reliable water supply and resilient environment.

1. 2016 operations. We are preparing for a very hard year, with advancing planning work for 2016 operations, examining a wide range of potential hydrology, lessons learned from 2014 and 2015 operations, modelling refinements and stakeholder engagements. This work will lead into an intense season of real time management challenges as we seek to maximize efficiencies in meeting the multiple demands upon the system;

2. Cal Water Fix. We seek to fulfill our mutual commits with the State on completing the NEPA and ESA reviews of the Governor's Cal Water Fix over the course of the year; and

3. Adaptive Management. We seek to strengthening significantly the overall adaptive management program to support better water and habitat investments and operations to achieve the purposes of the CVP and the SWP and to lay a stronger foundation for operations of dual conveyance, once it comes on line in the outyears. The water contractors have represented to us that this is also a top priority for them.

We are deeply concerned that the Cal drought legislation will from an operational perspective impose significant analytical requirements that will entirely or significantly displace these priorities. We are also very mindful of the prospects of a fresh round of litigation that can further distract resources and focus.

Specific Legislative Comments

Attached are edits and comments on the current text of selective sections of the California drought legislation which are provided as a technical drafting service. As a technical drafting matter, we do not believe the following amends the ESA or the BiOps:

“ . . . to maximize Central Valley project and State Water Project water supplies, manage export pumping rates to achieve a reverse OMR flow rate of –5,000 cubic feet per second unless existing information or that developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude, using the best available commercial and scientific data, that a less negative OMR flow rate is necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions.”

However, our final policy views on this language are dependent upon a number of factors, including:

1) Continued opposition to section 306 as authorizing actions outside of the BO;

2) We strongly recommend inclusion of a ESA savings clause that makes it clear if there is a conflict between this statutory language and the requirements of the ESA, the ESA prevails and nothing herein amends the ESA or existing BO's [note, the word recommend here is deliberate, and we recommend that you not do this. If there is going to be a savings clause, we recommend that it simply state that “Nothing in this Act is intended to amend the Endangered Species Act.”];

3) Inclusion of an express statement on the length of time these provisions are in effect; and

4) Whether there are other provisions in the bill that are objectionable.

5) The term “Biological Opinions” needs to be defined to include successor opinions so that the agencies are able to respond to changing conditions as required by the ESA.

Specific Comments on Counter-Offer Language

(e) SCIENTIFICALLY SUPPORTED IMPLEMENTATION OF OMR FLOW REQUIREMENTS.—In implementing the provisions of the smelt biological opinion, the salmonid biological opinion, or any successor biological opinions or court order, the Secretary of the Interior and the Secretary of Commerce shall manage Old and Middle Rivers, as prescribed in the biological opinion, to otherwise maximize water supplies for the Central Valley Project and State Water Project. Pertaining to management of reverse flow in the Old and Middle Rivers, the Secretary shall—

Commented [A1]: The BiOps do not by definition seek to maximize water deliveries; they prescribe operational parameters to avoid jeopardy. This edit is intended to minimize the likelihood that this legislative language will be interpreted literally.

(1) consider the relevant provisions of the biological opinions or any successor biological opinions;

Commented [A2]: Recommend that the definition of the term "biological opinion(s)" includes successor opinions so that the concept applies throughout.

(2) to maximize Central Valley project and State Water Project water supplies, manage export pumping rates to achieve a reverse OMR flow rate of -5,000 cubic feet per second unless existing information or that developed by the Secretary under paragraphs (3) and (4) leads the Secretary to reasonably conclude, using the best available commercial and scientific data, that a less negative OMR flow rate is necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions. If information available to the Secretary indicates that a reverse OMR flow rate more negative than -5,000 cubic feet per second can be established using the best available commercial and scientific data without additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions., the Secretary shall manage export pumping rates to achieve that more negative OMR flow rate;

(3) document in writing any significant facts about real-time conditions relevant to the determinations of OMR reverse flow rates, including—

(A) whether targeted real-time fish monitoring pursuant to this section, including monitoring in the vicinity of

Commented [A3]: Do not limit monitoring to Old River; the monitoring regime is broader.

Station 902, indicates that additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions is likely to occur. [We recommend that you push back on this change. Given the exigent circumstances that exist, “imminent” is an appropriate term. However, “is likely” is the language in section 7 of the ESA, so that may be the basis of this recommendation. If you decide to accept “is likely,” the word “occur” should be eliminated.]

Commented [A4]: In season real time management in fact uses a variety of time-scales from hourly to daily to weekly to monthly, depending upon the variable being managed. The concept of “imminent” obscures this fact and suggests that only short-term decision-making is permissible.

and

(B) whether near-term forecasts with available models show under prevailing conditions that OMR flow of -5,000 cubic feet per second or higher are likely to [We recommend that you push back on this change, but again “likely” is the standard in section 7.] cause additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data;

Commented [A5]: Do not limited this exclusively to salvage models as others are also used.

(4) show in writing that any determination to manage OMR reverse flow at rates less negative than -5,000 cubic feet per second is necessary to avoid additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data. , including an explanation of the data examined and the connection between those data and the choice made, after considering—

- (A) the distribution of Delta smelt throughout the Delta;
- (B) the potential effects of documented, quantified entrainment on subsequent Delta smelt abundance;
- (C) the water temperature;
- (D) other significant factors relevant to the determination;
- (E) turbidity; and

(F) whether any alternative measures could have a substantially lesser water supply impact; and

(5) for any subsequent biological opinion, make the showing required in paragraph (4) for any determination to manage OMR reverse flow at rates less negative than the most negative limit in the biological opinion if the most negative limit in the biological opinion is more negative than -5,000 cubic feet per second.

(6) The analyses and documentation required by this section shall be comparable to the depth and complexity as is appropriate for real time decision-making. This section shall not be interpreted to require a level of administrative findings and documentation that could impede the execution of effective real time adaptive management, as is generally provided for in section 307(g), below.

(f) CONSTRUCTION.- The Secretaries are authorized to implement subsection (e) consistent with and building upon previous operations in the 2014 and 2015 water years and utilize the results of monitoring through Early Warning Surveys to make real-time operational decisions consistent with the current applicable biological opinion.

~~SEC. 306. INCREASED FLEXIBILITY FOR REGULAR PROJECT OPERATIONS.~~

~~The Secretaries shall, consistent with applicable laws (including regulations) —~~

~~(1) in coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement offsite upstream projects in the Delta and upstream of the Sacramento River and San Joaquin basins that offset the effects on species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to activities carried out pursuant this Act, as determined by the Secretaries;~~

~~(2) manage reverse flow in the Old and Middle Rivers at =6,100 cubic feet per second if real time monitoring indicates that flows of =6,100 cubic feet per second or more negative can be established for specific periods without causing additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data., or if real time monitoring does not support flows of =6,100 cubic feet per second than manage OMR flows at =5,000 cubic feet per second subject to section 103(e) (3) and (4); and~~

~~(3) use all available scientific tools to identify any changes to real-time operations of the Bureau of Reclamation, State, and local water projects that could result in the availability of additional water supplies.~~

SEC. 307. TEMPORARY OPERATIONAL FLEXIBILITY FOR FIRST FEW STORMS OF THE WATER YEAR.

(a) IN GENERAL.—Consistent with avoiding additional adverse effects on listed species beyond the range of the effects anticipate to occur to the listed species for the duration of the smelt or salmonid biological opinions using the best available commercial and scientific data in the short term and resulting other environmental protections under subsection (e), the Secretaries shall authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in negative OMR flows at ~~7,500~~ in excess of -5000 cubic feet per second (based on United States Geological Survey gauges on Old and Middle Rivers) daily average for 56 cumulative days after October 1 as described in subsection (c) to capture peak flows during storm events during a sustained drought.

(b) DAYS OF TEMPORARY OPERATIONAL FLEXIBILITY.—The temporary operational flexibility described in subsection (a) shall be authorized on days that the California Department of Water Resources determines the (net Delta outflow index is at or above 13,000 cfs)

(c) COMPLIANCE WITH ENDANGERED SPECIES ACT AUTHORIZATIONS.—In carrying out this section, the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional adverse effects on listed species beyond the range of the effects

anticipate to occur to the listed species under the applicable smelt or salmonid biological opinions using the best available commercial and scientific data.

Commented [A6]: This clause appears to "lock in" a level of water deliveries irrespective of conditions and is therefore inconsistent with ESA and CWA fundamentals

(d) OTHER ENVIRONMENTAL PROTECTIONS.—

(1) STATE LAW.—The Secretaries' actions under this section shall be consistent with applicable regulatory requirements under State law.

(2) FIRST SEDIMENT FLUSH.—During the first flush of sediment out of the Delta in each water year, and provided that such determination is based upon objective evidence, OMR flow may be managed at rates less negative than -5,000 cubic feet per second for a minimum duration to avoid movement of adult Delta smelt (*Hypomesus transpacificus*) to areas in the southern Delta that would be likely to increase entrainment at Central Valley Project and State Water Project pumping plants.

(3) APPLICABILITY OF OPINION.—This section shall not affect the application of the salmonid biological opinion from April 1 to May 31, unless the Secretary of Commerce finds that some or all of such applicable requirements may be adjusted during this time period to provide emergency water supply relief without resulting in additional adverse effects beyond those authorized under the Endangered Species Act of 1973. In addition to any other actions to benefit water supply, the Secretary of the Interior and the Secretary of Commerce shall consider allowing through-Delta water transfers to occur during this period if they can be accomplished consistent with section 3405(a)(1)(H) of the Central Valley Project Improvement Act and other applicable law. Water transfers solely or exclusively through the State Water Project are not required to be consistent with section 3405(a)(1)(H) of the Central Valley Project Improvement Act.

(4) MONITORING.—During operations under this section, the Commissioner of Reclamation, in coordination with the Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife, shall undertake expanded monitoring program and other data gathering to improve the efficiency of operations from conservation and water supply perspectives, to ensure incidental take levels are not exceeded, and to identify potential negative impacts

and actions, if any, necessary to mitigate impacts of the temporary operational flexibility to species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(e) TECHNICAL ADJUSTMENTS TO TARGET PERIOD.—If, before temporary operational flexibility has been implemented on 56 cumulative days, the Secretaries operate the Central Valley Project and the State Water Project combined at levels that result in OMR flows at or below –5,000 cubic feet per second during days of temporary operational flexibility as defined in subsection (c), the duration of such operation shall not be counted toward the 56 cumulative days specified in subsection (a).

(f) EMERGENCY CONSULTATION; EFFECT ON RUNNING AVERAGES.—

(1) If necessary to implement the provisions of this section, the Commissioner is authorized to take any action necessary to implement this section for up to 56 cumulative days. If during the 56 cumulative days the Commissioner determines that actions necessary to implement this section will exceed 56 days, the Commissioner shall use the emergency consultation procedures under the Endangered Species Act of 1973 and its implementing regulation at section 402.05 of title 50, Code of Federal Regulations, to temporarily adjust the operating criteria under the biological opinions—

(A) solely for extending beyond the 56 cumulative days for additional days of temporary operational flexibility—

(i) no more than necessary to achieve the purposes of this section consistent with the environmental protections in subsections (c), (d) and (e); and

(ii) including, as appropriate, adjustments to ensure that the actual flow rates during the periods of temporary operational flexibility do not count toward the 5-day and 14-day running averages of tidally filtered daily OMR flow requirements under the biological opinions, or

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Updated 11-25-15 @ 11:30

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To: 'Tom Birmingham'
CC: 'Bernhardt, David L.'; 'Johnny Amaral'; Lombardi, Kyle; Tudor, Chris
Subject: RE: CRITICAL & TIMELY

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Sent: Wednesday, December 2, 2015 10:24 AM
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Subject: RE: CRITICAL & TIMELY

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From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]
Sent: Wednesday, December 02, 2015 10:23 AM
To: Bernhardt, David L.
Subject: Re: CRITICAL & TIMELY

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1. Do you recommend accepting the Bezdek language with all his edits? [Please see our comments in the text.](#)
2. If not, what edits do you not like or would be deal breakers? [Please see our comments in the text.](#)
3. Should we keep the 56 cumulative days or substitute in the Delta outflow standard that was negotiated on Monday? [Either should be acceptable.](#)
4. Most importantly, what is your best estimate on the amount water this language would get us? [This is a difficult question to answer because how much water the language would get us depends on many variables, the most important of which is](#)

hydrology. However, in an average year, the language could result in more than 800,000 acre-feet for the Central Valley Project and the State Water Project, cumulatively. In a year like 2009, the language could have produced as much as 1.1 million acre-feet. The basis of this estimate, is a comparison of operations in 2009 and 2010. In 2009, the smelt biological opinion was implemented in the most restrictive manner. In 2010, it was implemented in a manner more consistent with this language. The difference in exports during those two years, which were very similar in terms of hydrology, was more than one million acre-feet of water. (3.6 MAF in 2009; 4.7 MAF in 2010.)

Thanks,

Kyle

Kyle Lombardi
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

www.majorityleader.gov

Kyle Lombardi
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

www.majorityleader.gov

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Subject: DC Group call - update

Location:conference call

Start:12/4/2015 12:00 PM

End:12/4/2015 12:30 PM

Show Time As:Tentative

Recurrence:(none)

Meeting Status:Not yet responded

Organizer:Johnny Amaral

Required Attendees:Tom Birmingham; David Bernhardt; Dennis Cardoza; Catherine Karen; 'Smith, Ryan A.';

Denny Rehberg

Resources:conference call

Subject: DC Group call - update

Location: conference call

When: 2015-12-04, 11:00 - 11:30 GMT -8:00 (30 minutes)

Organizer: Johnny Amaral (jamaral@westlandswater.org)

Required Attendees: Tom Birmingham (tbirmingham@westlandswater.org) (tbirmingham@westlandswater.org), David Bernhardt (dbernhardt@bhfs.com), Dennis Cardoza (dcardoza@foley.com), Catherine Karen (ckaren@sidley.com), Smith, Ryan A. (RSmith@BHFS.com), Denny Rehberg (drehberg@mercuryllc.com)

1-800-████-████

Pass code - ██████

From: Karen, Catherine

Sent: Friday, December 4, 2015 10:51 AM

To: Tom Birmingham; Johnny Amaral; Dennis Cardoza; Denny Rehberg; David Bernhardt; rsmith@bhfs.com

Subject: From Maven's notebook

Importance: High

In case you had not seen

Senator Dianne Feinstein (D-Calif.) today released the following statement on California water negotiations:

"I understand that late Thursday night a drought bill was proposed as an addition to the omnibus. I am told it was proposed in my name, which I did not approve. This is regrettable, not only because I believe we remain close to an agreement on a broader bill, but also because it stands in opposition to my desire to do a bill in an open and public manner.

"House and Senate Democrats and Republicans have worked for months on new bill language that would address the differences between bills in both chambers. We have made significant progress toward a compromise bill that would include both long-term investments and short-term operations language to take advantage of El Nino, all in a manner consistent with environmental laws and biological opinions. But significant issues remain.

"California water is among the most difficult challenges I have worked on. These issues are complicated, highly technical and affect every person in a state of 38 million. I understand the urgency to pass a bill. We can't let that foil good policy. In addition, it is important to vet the compromise language with Governor Brown's administration, federal agencies, water districts, environmental groups and numerous other stakeholders, following regular order.

"At the end of the day, this is about doing the right thing for California. Many communities have gone without running water for months. The state has experienced one of its worst fire seasons in decades. Hundreds of thousands of acres of farm land have been fallowed. We can't afford to let this effort fail."

CATHERINE KAREN

Counsel

Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005
+1 202 736 8368

ckaren@sidley.com
www.sidley.com



SIDLEY AUSTIN LLP

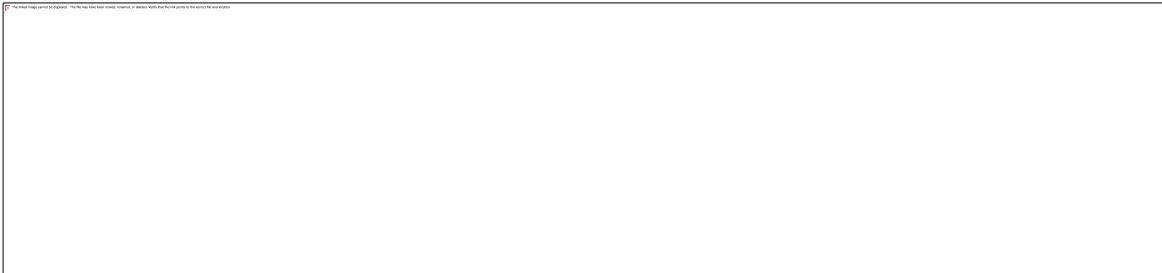
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If you are not the intended recipient, please delete the e-mail and any attachments and notify us
immediately.

From: Bernhardt, David L.
Sent: Monday, December 7, 2015 9:09 AM
To: Johnny Amaral
Subject: Fwd: Feinstein Statement on California Water Negotiations
Attachments: image001.png

David Bernhardt

Subject: Fw: Feinstein Statement on California Water

From: Feinstein Press
Sent: Friday, December 04, 2015 6:12 PM
Subject: Feinstein Statement on California Water Negotiations



For Immediate Release

Contact: Tom Mentzer

December 4, 2015

(202) 224-9629

Feinstein Statement on California Water Negotiations

Washington—Senator Dianne Feinstein (D-Calif.) today released the following statement on California water negotiations:

“I want to set the record straight. To imply that the federal or state governments have signed off on a water bill is patently false. While we have reached agreement on major provisions, there are others that we do not have agreement on at this time.

“I spoke with Leader McCarthy and clearly said that we had to have sign-off on the bill from the federal and state governments, and that was the process we were undergoing.

“To pass any bill out of the Senate, it must be supported by both California senators. Senator Boxer has urged an open process and the sign-off of both the federal and state governments, which is a very reasonable request. It is my intention to finish this process and submit the bill for regular order.”

###

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From: Johnny Amaral

Sent: Wednesday, December 9, 2015 1:19 PM

To: 'Carolyn Jensen'; 'Ed Manning'; 'Mike Burns'; 'Catherine Karen'; 'David Bernhardt'; 'Dennis Cardoza'; 'Denny Rehberg'; 'Smith, Ryan A.'; Tom Birmingham; Gayle Holman

Subject: Final Joint letter on OMNI

Attachments: FINAL joint letter on OMNI.docx

Team,

The attached letter was just transmitted to Mr. McCarthy and Mr. Calverts staff.

Action items:

David, please make sure Senator Feinstein's staff and Senator Murkowskis staff get it.

I will send it to the rest of the CA delegation, Speaker Ryans staff, and to Senator McConnells staff.



SOUTH VALLEY WATER



December 9, 2015

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Kevin McCarthy
House Majority Leader
H-107, The Capitol
Washington, DC 20515

Senator Feinstein and Leader McCarthy:

We are writing to express our appreciation and ask for your continued efforts to find a legislative solution to the water crisis facing the State of California. The undersigned and your staff, as well as staff from other California delegation offices, have worked tirelessly to develop compromise, common sense legislation that does not amend the Endangered Species Act or existing biological opinions while at the same time creating much needed operational flexibility to provide water for California's families, farms and businesses.

The California drought is a slow moving natural disaster with impacts having been documented by media outlets locally, nationally, and across the globe. The accumulated impacts of the past four years have devastated families, created unlivable conditions in many of the Valley's disadvantaged communities, reduced California's ability to feed the nation and the world, and left local governments with increased demands for social services. Nowhere in the State have the impacts of water supply shortages been more severe than in the Central Valley.

As you know, the lack of snow pack and rainfall are not the only reasons the State has run dangerously low on water. Administrative actions have paralyzed operations of the Central Valley Project and the California State Water Project. These water supply delivery systems have historically been able to supply the State with water, even during extended drought conditions. If legislation to provide clear congressional direction and to create operational flexibility for the State's two major water projects is not enacted this year, the devastation

experienced over the last four years could be extended to a fifth year, even with the El Nino conditions projected for this winter. That is, millions of acre feet of water will be lost, at a time when the people of the state of California need it most.

We need you to act now, through any vehicle possible, to pass legislation that can provide California with relief. You personally have acknowledged the need for action this year. Historically, California's heaviest rainfall occurs from December through March. Legislation must be enacted now to take advantage of those wet months. Waiting to take up the discussions and process again when Congress returns in January will be too late to help in 2016. For these reasons, absent another form of legislation that would be equally effective, we must support inclusion of the compromise, common sense legislation you and others have worked on in the omnibus appropriations bill being considered by both Houses of Congress.

Thank you for your continued leadership and dedication to find common sense solutions that are required to sustain the people and the economy of the State of California.

Sincerely,

Friant North Authority
Friant Water Authority
Kern County Water Agency
San Joaquin River Exchange Contractors
San Luis & Delta-Mendota Water Authority
South Valley Water Association
Westlands Water District

Cc: California Congressional Delegation
House Speaker Paul Ryan
Senate Majority Leader Mitch McConnell
Senator Lisa Murkowski

From: Bernhardt, David L.

Sent: Wednesday, December 9, 2015 3:26 PM

To: Johnny Amaral (jamaral@westlandswater.org); Thomas W. Birmingham (tbirmingham@westlandswater.org)

Subject: FW: Urgent Water Action Alert

FYI

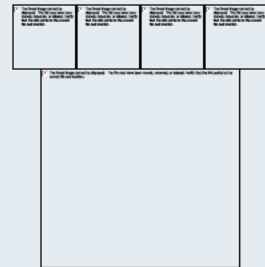
From: Western Growers [mailto:westerngrowers@wga.com]

Sent: Wednesday, December 09, 2015 5:19 PM

To: Bernhardt, David L.

Subject: Urgent Water Action Alert

If you are having trouble viewing this email, [view it online](#).



URGENT WATER ACTION ALERT

Western Growers urges all members to call Sen. Dianne Feinstein's office today to urge immediate action on water legislation needed to capture and store as much El Niño storm runoff as possible in the coming months. Contact the Senator at any of the following offices. Remember to provide your name and city before making your key points.

Washington, DC: 202-224-3841

Fresno: 559-485-7430

Los Angeles: 310-914-7300

San Francisco: 415-393-0707

San Diego: 619-231-9712

Key points (*try to put this in your own words*, and add other arguments as you wish):

- Legislation that gives flexibility to the water agencies is needed now, before the El Niño rains come and huge amounts of runoff are lost to the ocean
- California has huge amounts of empty reservoir space south of the Delta that can only be filled if you act now to allow more storm runoff to be pumped from the Delta
- This has been negotiated extensively and insisting on more hearings and process will only cause El Niño runoff to be lost
- The Obama Administration confirms that this would not amend the Endangered Species Act or the fish protection rules in the Delta
- Tens of thousands of farmers, and hundreds of thousands of our employees, are desperate for you to act now

Please, DO NOT wait to call. Western Growers members can turn this situation around if we pick up the phone and call NOW.

Thank you.

Dave Puglia
Executive Vice President
Western Growers
dpuglia@wga.com

[Western Growers](#) | 17620 Fitch Street | Irvine | CA | 92614

This message was intended for: dbernhardt@bhfs.com
You were added to the system September 9, 2011.
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From: Petersen, Scott

Sent: Thursday, December 10, 2015 12:56 PM

To: tbirmingham@westlandswater.org

CC: David Bernhardt; Costa, Jim

Subject: El Nino pitch

Attachments: 2015-12-10 El Nino Effect Short Term Emergency Drought Relief Act of 2015_draft.docx

Importance: High

Good morning Tom and Dave,

Attached, please find a pass at a short term proposal that would extend through May 31, 2016, incorporating a few provisions from the Republican omnibus offer to Senator Feinstein and revised to address the comments from the Administration. The relevant sections that have been included in the proposal are:

- Section _02: Emergency Operations and Reviews
- Section _04: Scientifically supported implementation of OMR flow requirements
- Section _05: Temporary operational flexibility for first few storms of water year
- Section _06: Water rights protections
- Section _07: Assistance for drought stricken communities
- Section _08: Compliance with ESA
- Section _09: Sunset

Please review and provide any comments or revisions as soon as possible. My boss would like to walk this proposal to the Senators today. Also, note that the formatting is a little choppy, I didn't have a word copy of the original proposal from the House Republican staff.

If you have any questions, I'm available via mobile phone at 202-████-████

Best, Scott

J. Scott Petersen, P.E.

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

[Language Proposed to be Included]

**1 TITLE _____— EL NIÑO EFFECT
SHORT-TERM EMER-
2 GENCY DROUGHT RELIEF
3 ACT OF 2015**

**4 SEC. ____01. SHORT TITLE; TABLE OF CONTENTS; FINDING;
5 DEFINITIONS.**

6 (a) SHORT TITLE.—This title may be cited as the
**7 “El Niño Effect Short-Term Emergency Drought Relief
8 Act of 2015”.**

9 (b) TABLE OF CONTENTS.—The table of contents for
10 this title is as follows:

Sec. _01. Short title; table of contents; finding; definitions.

Sec. _02. Emergency operations and reviews.

Sec. _04. Scientifically supported implementation of OMR flow requirements.

Sec. _05. Temporary operational flexibility for first few storms of the water year.

Sec. _06. State water project offset and water rights protections.

Sec. _07. Assistance for drought-stricken communities.

Sec. _08. Compliance with the Endangered Species Act.

Sec. _09. Sunset.

1 (c) FINDINGS.—

(1) Despite the commencement of a new water year on October 1, drought conditions persist in California. The Governor, the California State Water Resources Control Board, the federal Central Valley Project, and the State Water Project are all considering or projecting measures to address persistent dire drought conditions through 2016. According to the Climate Prediction Center of the National Oceanic and Atmospheric Administration, “A strong El Niño is in place and should exert a strong influence over weather this winter”. However, “[w]hile temperature and precipitation impacts associated with El Niño are favored, ... the frequency, number and intensity of these [El Niño and other] events cannot be predicted on a seasonal timescale.” As such, Congress must provide some immediate, urgent relief to drought stricken California on a temporary basis in order to take advantage of late fall and early winter storm events should they occur.

9 (d) DEFINITIONS.—For purposes of this Act:

10 (1) ASSISTANT ADMINISTRATOR.—The term
11 “Assistant Administrator” means the Assistant Ad-
12 ministrator of the National Oceanic and Atmos-
13 pheric Administration for Fisheries.

14 (2) CENTRAL VALLEY PROJECT.—The term
15 “Central Valley Project” has the meaning given the
16 term in section 3403 of the Central Valley Project
17 Improvement Act (Public Law 102–575; 106 Stat.
18 4707).

19 (3) COMMISSIONER.—The term “Commis-
20 sioner” means the Commissioner of the Bureau of
21 Reclamation.

22 (4) DELTA.—The term “Delta” means the Sac-

23 ramento-San Joaquin Delta and the Suisun Marsh
24 (as defined in section 12220 of the California Water
25 Code and section 29101 of the California Public Re-

1 sources Code (as in effect on the date of enactment
2 of this Act)).

3 (5) DELTA SMELT.—The term “Delta smelt”
4 means the fish species with the scientific name
5 *Hypomesus transpacificus*.

(6) El Nino Effect.—The terms El Nino or El Nino
Effect means the phenomena of periodic increases in temperature in
portions of the Pacific Ocean that can result in, among other
impacts, increased precipitation in portions of the Western United
States.

6 (7) LISTED FISH SPECIES.—The term “listed
7 fish species” means listed salmonid species and the
8 Delta smelt.

9 (8) OMR.—The term “OMR” means the Old
10 and Middle River in the Delta.

11 (9) OMR FLOW OF –5,000 CUBIC FEET PER
12 SECOND.—The term “OMR flow of –5,000 cubic
13 feet per second” means Old and Middle River flow
14 of negative 5,000 cubic feet per second as described
15 in—

16 (A) the smelt biological opinion; and

17 (B) the salmonid biological opinion.

18 (10) SALMONID BIOLOGICAL OPINION.—The
19 term “salmonid biological opinion” means the bio-
20 logical and conference opinion of the National Ma-
21 rine Fisheries Service, dated June 4, 2009, on the
22 long-term operation of the Central Valley Project
23 and the State Water Project, including the operative

24 incidental take statement of that opinion, or suc-
25 cessor biological opinions.

(11) SECRETARIES.—The term Secretaries means the Secretary of the Interior and Secretary of Commerce, collectively.

(12) SMELT BIOLOGICAL OPINION.—The term “smelt biological opinion” means the biological opinion, dated December 15, 2008, on the coordinated operation of the Central Valley Project and the State Water Project, including the operative incidental take statement of that opinion, or successor biological opinions.

(13) STATE.—The term “State” means the State of California.

(14) STATE WATER PROJECT.—The term “State Water Project” means the water project described in chapter 5 of part 3 of division 6 of the California Water Code (sections 11550 et seq. (as in effect on the date of enactment of this Act)) and operated by the California Department of Water Resources.

SEC. 02. EMERGENCY OPERATIONS AND REVIEWS.

(a) WATER SUPPLIES.—

(1) IN GENERAL.—The Secretary of the Interior and Secretary of Commerce shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial contractors, water service or repayment contractors, water rights settlement contractors, exchange contractors, refuge contractors, and State

25 Water Project contractors, by approving operations

1 or temporary projects to provide additional water
2 supplies as quickly as possible, based on available in-
3 formation, to address the emergency conditions.

4 (2) APPLICATION.—Paragraph (1) shall apply
5 to any operation or temporary project involving the
6 Klamath Project, if the project or operation would
7 benefit Federal water contractors in the State, as
8 long as nothing in this provision shall be interpreted
9 to limit the ability of the Secretary of the Interior
10 to meet all legal obligations, including protection of
11 the tribal fishery.

12 (b) ADMINISTRATION.—In carrying out subsection
13 (a), the Secretary of the Interior and Secretary of Com-
14 merce shall, consistent with applicable laws (including reg-
15 ulations)—

16 (1)(A) in close coordination with the California
17 Department of Water Resources and the California
18 Department of Fish and Wildlife, for the duration of
19 the drought emergency declared by the Governor of
20 the State, implement a pilot project to test and
21 evaluate the ability to operate the Delta cross-chan-
22 nel gates diurnally or as otherwise may be appro-
23 priate to keep them open to the greatest extent prac-
24 ticable to protect out-migrating salmonids, manage
25 salinities in the interior Delta and any other water

1 quality issues, and maximize Central Valley Project
2 and State Water Project pumping, subject to the
3 condition that the pilot project shall be designed and
4 implemented consistent with operational criteria and
5 monitoring criteria developed pursuant to the Cali-
6 fornia State Water Resources Control Board's Order
7 Approving a Temporary Urgency Change in License
8 and Permit Terms in Response to Drought Condi-
9 tions, effective January 31, 2014 (or a successor
10 order); and

11 (B) design, implement, and evaluate such real-
12 time monitoring capabilities to enable effective real-
13 time operations of the cross channel in order effi-
14 ciently to meet the objectives described in subpara-
15 graph (A);

16 (2) with respect to the operation of the Delta
17 Cross Channel Gates described in paragraph (1),
18 collect data on the impact of that operation on—

19 (A) species listed as threatened or endan-
20 gered under the Endangered Species Act of
21 1973 (16 U.S.C. 1531 et seq.);

22 (B) water quality; and

23 (C) water supply benefits;

24 (3) collaborate with the California Department
25 of Water Resources to install a deflection barrier at

1 Georgiana Slough and the Delta Cross Channel Gate
2 to protect migrating salmonids, consistent with
3 knowledge gained from activities carried out during
4 2014 and 2015;

5 (4) not later than May 15, 2016, submit to the
6 Senate Committees on Energy and Natural Re-
7 sources and Environment and Public Works and the
8 House Committee on Natural Resources a notice
9 and explanation on the extent to which the gates are
10 able to remain open pursuant to paragraphs (1)
11 through (3);

12 (5) implement turbidity control strategies that
13 may allow for increased water deliveries while avoid-
14 ing jeopardy to adult Delta smelt (*Hypomesus*
15 *transpacificus*) due to entrainment at Central Valley
16 Project and State Water Project pumping plants;

17 (6) in a timely manner, evaluate any proposal
18 to increase flow in the San Joaquin River through
19 a voluntary sale, transfer, or exchange of water from
20 an agency with rights to divert water from the San
21 Joaquin River or its tributaries;

22 (7) adopt a 1:1 inflow to export ratio for the in-
23 crement of increased flow, as measured as a 3-day
24 running average at Vernalis during the period from
25 April 1 through May 31, that results from the vol-

1 untary sale, transfer, or exchange, unless the Sec-
2 retary of the Interior and Secretary of Commerce
3 determine in writing that a 1:1 inflow-to-export ratio
4 for that increment of increased flow will avoid addi-
5 tional adverse effects on listed salmonid species be-
6 yond the range of the effects anticipated to occur to
7 the listed salmonid species for the duration of the
8 salmonid biological opinion using the best scientific
9 and commercial data available; any individual sale,
10 transfer, or exchange using a 1:1 inflow to export
11 ratio adopted under the authority of this section
12 may only proceed if—

13 (A) the Secretary of the Interior deter-
14 mines that the environmental effects of the pro-
15 posed sale, transfer, or exchange are consistent
16 with effects permitted under applicable law (in-
17 cluding the Endangered Species Act (16 U.S.C.
18 1531 et seq.), the Federal Water Pollution Con-
19 trol Act (33 U.S.C. 1381 et seq.), and the Por-
20 ter-Cologne Water Quality Control Act (Calif-
21 ornia Water Code 13000 et seq.));

22 (B) Delta conditions are suitable to allow
23 movement of the acquired, transferred, or ex-
24 changed water through the Delta consistent
25 with existing Central Valley Project and State

1 Water Project permitted water rights and the
2 requirements of section 3405(a)(1)(H) of the
3 Central Valley Project Improvement Act; and

4 (C) such voluntary sale, transfer, or ex-
5 change of water results in flow that is in addi-
6 tion to flow that otherwise would occur in the
7 absence of the voluntary sale, transfer, or ex-
8 change;

9 (8)(A) issue all necessary permit decisions dur-
10 ing emergency consultation under the authority of
11 the Secretary of the Interior and Secretary of Com-
12 merce not later than 60 days after receiving a com-
13 pleted application by the State to place and use tem-
14 porary barriers or operable gates in Delta channels
15 to improve water quantity and quality for State
16 Water Project and Central Valley Project south-of-
17 Delta water contractors and other water users,
18 which barriers or gates shall provide benefits for
19 species protection and in-Delta water user water
20 quality, provided that they are designed so that, if
21 practicable, formal consultations under section 7 of
22 the Endangered Species Act of 1973 (16 U.S.C.
23 1536) are not necessary; and

24 (B) take longer to issue the permit decisions in
25 subparagraph (A) only if the Secretary determines

1 in writing that an Environmental Impact Statement
2 is needed for the proposal to comply with the Na-
3 tional Environmental Policy Act of 1969 (42 U.S.C.
4 4321 et seq.);

5 (9) allow and facilitate, consistent with existing
6 priorities, water transfers through the C.W. “Bill”
7 Jones Pumping Plant or the Harvey O. Banks
8 Pumping Plant provided that such transfers are
9 consistent with applicable law and regulations;

10 (10) require the Director of the United States
11 Fish and Wildlife Service and the Commissioner of
12 Reclamation to—

13 (A) determine if a written transfer pro-
14 posal is complete within 30 days after the date
15 of submission of the proposal. If the contracting
16 district or agency or the Secretary determines
17 that the proposal is incomplete, the district or
18 agency or the Secretary shall state with speci-
19 ficity what must be added to or revised for the
20 proposal to be complete;

21 (B) complete all requirements under the
22 National Environmental Policy Act of 1969 (42
23 U.S.C. 4321 et seq.) and the Endangered Spe-
24 cies Act of 1973 (16 U.S.C. 1531 et seq.) nec-

1 essary to make final permit decisions on water
2 transfer requests in the State, not later than 30
3 days after receiving such a request;

4 (C) take longer to issue the permit deci-
5 sions in subparagraph (A) only if the Secretary
6 determines in writing that an Environmental
7 Impact Statement is needed for the proposal to
8 comply with the National Environmental Policy
9 Act of 1969 (42 U.S.C. 4321 et seq.); and

10 (D) approve any water transfer request de-
11 scribed in subparagraph (A) to maximize the
12 quantity of water supplies on the condition that
13 actions associated with the water transfer are
14 consistent with existing Central Valley Project
15 and State Water Project permitted water rights
16 and the requirements of section 3405(a)(1)(H)
17 of the Central Valley Project Improvement Act;

18 (11) use all available scientific tools to identify
19 any changes to real-time operations of Bureau of
20 Reclamation, State, and local water projects that
21 could result in the availability of additional water
22 supplies; and

23 (12) continue to vary the averaging period of
24 the Delta Export/Inflow ratio, to the extent con-
25 sistent with any applicable State Water Resources

1 Control Board orders under decision D-1641, to op-
2 erate to a—

3 (A) 35-percent Export/Inflow ratio with a
4 3-day averaging period on the rising limb of a
5 Delta inflow hydrograph; and

6 (B) 14-day averaging period on the falling
7 limb of the Delta inflow hydrograph.

8 (c) OTHER AGENCIES.—To the extent that a Federal
9 agency other than the Department of the Interior and the
10 Department of Commerce has a role in approving projects
11 described in subsections (a) and (b), this section shall
12 apply to the Federal agency.

13 (d) ACCELERATED PROJECT DECISION AND ELE-
14 VATION.—

15 (1) IN GENERAL.—The Secretary of the Inte-
16 rior and Secretary of Commerce shall use the expe-
17 dited procedures under this subsection to make final
18 decisions relating to Federal or federally-approved
19 projects or operational changes proposed pursuant to
20 subsections (a) and (b) to provide additional water
21 supplies or otherwise address emergency drought
22 conditions.

23 (2) REQUEST FOR RESOLUTION.—Not later
24 than 7 days after receiving a request of the Gov-
25 ernor of the State, the Secretaries referred to in

1 paragraph (1), or the head of another Federal agen-
2 cy responsible for carrying out a review of a project,
3 as applicable, the Secretary of the Interior shall con-
4 vene a final project decision meeting with the heads
5 of all relevant Federal agencies to decide whether to
6 approve a project to provide emergency water sup-
7 plies or otherwise address emergency drought condi-
8 tion

9 (3) NOTIFICATION.—Upon receipt of a request
10 for a meeting under this subsection, the Secretary of
11 the Interior shall notify the heads of all relevant
12 Federal agencies of the request, including a descrip-
13 tion of the project to be reviewed and the date for
14 the meeting.

15 (4) DECISION.—Not later than 10 days after
16 the date on which a meeting is requested under
17 paragraph (2), the head of the relevant Federal
18 agency shall issue a final decision on the project.

19 (5) MEETING CONVENED BY SECRETARY.—The
20 Secretary of the Interior may convene a final project
21 decision meeting under this subsection at any time,
22 at the discretion of the Secretary, regardless of
23 whether a meeting is requested under paragraph (2).

24 (6) LIMITATION.—The expedited procedures
25 under this subsection apply only to—

1 budgeting, implementation, and evaluation of the
2 pilot program under this paragraph using such exist-
5 plicable laws (including regulations).

6 (e) DROUGHT PLAN.—For the duration that this
7 section is in effect, the Secretaries, in consultation with
8 appropriate State officials, shall develop a drought
9 operations plan that is consistent with the
10 provisions of this Act including the provisions that are in-
11 tended to provide additional water supplies that could be
12 of assistance during the current drought.

19 **SEC. _04. SCIENTIFICALLY SUPPORTED IMPLEMENTATION**

20 **OF OMR FLOW REQUIREMENTS.**

21 (a) IN GENERAL.—In implementing the provisions of
22 the smelt biological opinion and the salmonid biological
23 opinion, the Secretary of the Interior and the Secretary
24 of Commerce shall manage Old and Middle Rivers, as pre-
25 scribed in the smelt biological opinion and the salmonid

1 biological opinion, to otherwise maximize water supplies
2 for the Central Valley Project and the State Water
3 Project. Pertaining to management of reverse flow in the
4 Old and Middle Rivers, the Secretary of the Interior shall
5 take the following actions:

6 (1) Consider the relevant provisions of the
7 smelt biological opinion and the salmonid biological
8 opinion, or any successor biological opinions.

9 (2) To maximize Central Valley project and
10 State Water Project water supplies, manage export
11 pumping rates to achieve a reverse OMR flow rate
12 of at least -5,000 to -7,100 cubic feet per second
unless existing infor-

13 mation or that developed by the Secretary under
14 paragraphs (3) and (4) leads the Secretary to rea-
15 sonably conclude, using the best scientific and com-
16 mercial data available, that a less negative OMR
17 flow rate is necessary to avoid additional adverse ef-
18 fects on listed species beyond the range of the effects
19 anticipated to occur to the listed species for the du-
20 ration of the smelt biological opinion or the salmonid
21 biological opinion. If information available to the
22 Secretary of the Interior indicates that a reverse
23 OMR flow rate more negative than -5,000 cubic feet
24 per second can be established using the best com-
25 mercial and scientific data available without addi-

1 tional adverse effects on listed species beyond the
2 range of the effects anticipated to occur to the listed
3 species for the duration of the smelt biological opin-
4 ion or the salmonid biological opinion, the Secretary
5 of the Interior shall manage export pumping rates to
6 achieve that more negative OMR flow rate.

7 (3) Document, in writing, any significant facts
8 about real-time conditions relevant to the determina-
9 tions of OMR reverse flow rates, including—

10 (A) whether targeted real-time fish moni-
11 toring pursuant to this section, including moni-
12 toring in the vicinity of Station 902, indicates
13 that additional adverse effects on listed species
14 beyond the range of the effects anticipated to
15 occur to the listed species for the duration of
16 the smelt biological opinion or the salmonid bio-
17 logical opinion is imminent; and

18 (B) whether near-term forecasts with avail-
19 able models show under prevailing conditions
20 that OMR flow of -5,000 cubic feet per second
21 or higher will cause additional adverse effects
22 on listed species beyond the range of the effects
23 anticipated to occur to the listed species for the
24 duration of the smelt biological opinion or the

1 salmonid biological opinion using the best sci-
2 entific and commercial data available.

3 (4) Show, in writing, demonstrable, replicable
evidence that any determination to
4 manage OMR reverse flow at rates less negative
5 than -5,000 cubic feet per second is necessary to
6 avoid additional adverse effects on listed species be-
7 yond the range of the effects anticipated to occur to
8 the listed species for the duration of the smelt bio-
9 logical opinion or the salmonid biological opinion
10 using the best scientific and commercial data avail-
11 able, including an explanation of the data examined
12 and the connection between those data and the
13 choice made, after considering—

14 (A) the distribution of Delta smelt
15 throughout the Delta;

16 (B) the potential effects of documented,
17 quantified entrainment on subsequent Delta
18 smelt abundance;

19 (C) the water temperature;

20 (D) other significant factors relevant to
21 the determination;

22 (E) turbidity; and

23 (F) whether any alternative measures
24 could have a substantially lesser water supply
25 impact.

1 (5) For any subsequent smelt biological opinion
2 or salmonid biological opinion, make the showing re-
3 quired in paragraph (4) for any determination to
4 manage OMR reverse flow at rates less negative
5 than the most negative limit in the biological opinion
6 if the most negative limit in the biological opinion is
7 more negative than -5,000 cubic feet per second.

8 (b) **LEVEL OF DETAIL REQUIRED.**—The analyses
9 and documentation required by this section shall be com-
10 parable to the depth and complexity as is appropriate for
11 real time decision-making. This section shall not be inter-
12 preted to require a level of administrative findings and
13 documentation that could impede the execution of effective
14 real time adaptive management, as is generally provided
15 for in section.

16 (c) **FIRST SEDIMENT FLUSH.**—During the first flush
17 of sediment out of the Delta prior to May 31, 2016, and pro-

18 vided that such determination is based upon objective
19 replicable evi-

20 dence, notwithstanding subsection (a), the Secretary may
21 manage OMR flow at rates less negative than -5,000 cubic
22 feet per second for a minimum duration to avoid move-
23 ment of adult Delta smelt (*Hypomesus transpacificus*) to
24 areas in the southern Delta that would be likely to in-
25 crease entrainment at Central Valley Project and State
Water Project pumping plants.

1 (d) CONSTRUCTION.—The Secretary of the Interior
2 and the Secretary of Commerce are authorized to imple-
3 ment subsection (a) consistent with the results of moni-
4 toring through Early Warning Surveys to make real time
5 operational decisions consistent with the current applica-
6 ble biological opinion.

7 (e) CONCLUSION.—In implementing or at the conclu-
8 sion of actions under subsection (a), the Secretary of the
9 Interior shall not reinitiate consultation on those adjusted
10 operations if there is no additional adverse effects on listed
11 species beyond the range of the effects anticipated to occur
12 to listed species for the duration of the smelt biological
13 opinion or salmonid biological opinion.

14 **SEC. 05. TEMPORARY OPERATIONAL FLEXIBILITY FOR**
15 **FIRST FEW STORMS OF THE WATER YEAR.**

16 (a) IN GENERAL.—Consistent with avoiding addi-
17 tional adverse effects on listed species beyond the range
18 of the effects anticipated to occur to the listed species for
19 the duration of the smelt biological opinion or salmonid
20 biological opinion, using the best scientific and commercial
21 data available and other environmental protections under
22 subsection (e) while maximizing water supplies for Central
23 Valley Project and State Water Project contractors, the
24 Secretary of the Interior and the Secretary of Commerce
25 shall authorize the Central Valley Project and the State

1 Water Project, combined, to operate at levels that result
2 in OMR flows more negative than -5,000 cubic feet per
3 second (based on United States Geological Survey gauges
4 on Old and Middle Rivers) daily average as described in
5 subsections (b) and (c) to capture peak flows during
6 events.

7 (b) DAYS OF TEMPORARY OPERATIONAL FLEXI-
8 BILITY.—The temporary operational flexibility described
9 in subsection (a) shall be authorized on days that the Cali-
10 fornia Department of Water Resources determines the net
11 Delta outflow index is at or above 13,000 cubic feet per
12 second.

13 (c) OTHER ENVIRONMENTAL PROTECTIONS.—

14 (1) STATE LAW.—The actions of the Secretary
15 of the Interior and the Secretary of Commerce under
16 this section shall be consistent with applicable regu-
17 latory requirements under State law.

18 (2) FIRST SEDIMENT FLUSH.—During the first
19 flush of sediment out of the Delta in each water
20 year, and provided that such determination is based
21 upon objective evidence, OMR flow may be managed
22 rates less negative than -5,000 cubic feet per second
23 for a minimum duration to avoid movement of adult
24 Delta smelt (*Hypomesus transpacificus*) to areas in
25 the southern Delta that would be likely to increase

1 entrainment at Central Valley Project and State
2 Water Project pumping plants.

3 (3) APPLICABILITY OF OPINION.—This section
4 shall not affect the application of the salmonid bio-
5 logical opinion from April 1 to May 31, unless the
6 Secretary of Commerce finds that some or all of
7 such applicable requirements may be adjusted dur-
8 ing this time period to provide emergency water sup-
9 ply relief without resulting in additional adverse ef-
10 fects on listed salmonid species beyond the range of
11 the effects anticipated to occur to the listed
12 salmonid species for the duration of the salmonid bi-
13 ological opinion using the best scientific and com-
14 mercial data available. In addition to any other ac-
15 tions to benefit water supply, the Secretary of the
16 Interior and the Secretary of Commerce shall con-
17 sider allowing through-Delta water transfers to
18 occur during this period if they can be accomplished
19 consistent with section 3405(a)(1)(H) of the Central
20 Valley Project Improvement Act and other applicable
21 law. Water transfers solely or exclusively through
22 the State Water Project are not required to be con-
23 sistent with section 3405(a)(1)(H) of the Central
24 Valley Project Improvement Act.

1 (4) MONITORING.—During operations under
2 this section, the Commissioner of Reclamation, in
3 coordination with the Fish and Wildlife Service, Na-
4 tional Marine Fisheries Service, and California De-
5 partment of Fish and Wildlife, shall undertake ex-
6 panded monitoring programs and other data gath-
7 ering to improve the efficiency of operations for list-
8 ed species protections and Central Valley Project
9 and State Water Project water supply to ensure inci-
10 dental take levels are not exceeded, and to identify
11 potential negative impacts and actions, if any, nec-
12 essary to mitigate impacts of temporary operational
13 flexibility to Delta smelt or listed salmonid species.

14 (d) EFFECT OF HIGH OUTFLOWS.—In recognition of
15 the high outflow levels from the Delta during the days this
16 section is in effect under subsection (b), the Secretary of
17 the Interior and the Secretary of Commerce shall not
18 count such days toward the 5-day and 14-day running
19 averages of tidally filtered daily Old and Middle River flow
20 requirements under the smelt biological opinion and
21 salmonid biological opinion, as long as the Secretaries
22 avoid additional adverse effects on listed fish species be-
23 yond those anticipated to occur through implementation
24 of the smelt biological opinion and salmonid biological

1 opinion using the best scientific and commercial data
2 available.

3 (e) OMR FLOWS.—The Secretary of the Interior and
4 the Secretary of Commerce shall, through the adaptive
5 management provisions in the salmonid biological opinion,
6 limit OMR reverse flow to -5,000 cubic feet per second
7 based on date certain triggers in the salmonid biological
8 opinions only if using real-time migration information on
9 salmonids demonstrates that such action is necessary to
10 avoid additional adverse effects on listed salmonid species
11 beyond the range of the effects anticipated to occur to the
12 listed salmonid species for the duration of the salmonid
13 biological opinion using the best scientific and commercial
14 data available.

15 (f) CONCLUSION.—In implementing or at the conclu-
16 sion of actions under this section, the Secretary of the In-
17 terior shall not reinitiate consultation on those adjusted
18 operations if there is no additional adverse effects on listed
19 species beyond the range of the effects anticipated to occur
20 to listed species for the duration of the smelt biological
21 opinion or salmonid biological opinion.

22 (g) LEVEL OF DETAIL REQUIRED FOR ANALYSIS.—
23 In articulating the determinations required under this sec-
24 tion, the Secretary of the Interior and the Secretary of
25 Commerce shall fully satisfy the requirements herein but

1 shall not be expected to provide a greater level of sup-
2 porting detail for the analysis than feasible to provide
3 within the short timeframe permitted for timely real-time
4 decision-making in response to changing conditions in the
5 Delta.

6 **SEC. 06. STATE WATER PROJECT OFFSET AND WATER**
7 **RIGHTS PROTECTIONS.**

8 (a) **OFFSET FOR STATE WATER PROJECT.—**

9 (1) **IMPLEMENTATION IMPACTS.—**The Sec-
10 retary of the Interior shall confer with the California
11 Department of Fish and Wildlife in connection with
12 the implementation of this Act on potential impacts
13 to any consistency determination for operations of
14 the State Water Project issued pursuant to Cali-
15 fornia Fish and Game Code section 2080.1.

16 (2) **ADDITIONAL YIELD.—**If, as a result of the
17 application of this Act, the California Department of
18 Fish and Wildlife—

19 (A) determines that operations of the State
20 Water Project are inconsistent with the consist-
21 ency determinations issued pursuant to Cali-
22 fornia Fish and Game Code section 2080.1 for
23 operations of the State Water Project; or

24 (B) requires take authorization under Cali-
25 fornia Fish and Game Code section 2081 for

1 operation of the State Water Project in a man-
2 ner that directly or indirectly results in reduced
3 water supply to the State Water Project as
4 compared with the water supply available under
5 the smelt biological opinion and the salmonid
6 biological opinion; and

7 as a result, Central Valley Project yield is greater
8 than it otherwise would have been, then that addi-
9 tional yield shall be made available to the State
10 Water Project for delivery to State Water Project
11 contractors to offset that reduced water supply.

12 (3) NOTIFICATION RELATED TO ENVIRON-
13 MENTAL PROTECTIONS.—The Secretary of the Inte-
14 rior and Secretary of Commerce shall—

15 (A) notify the Director of the California
16 Department of Fish and Wildlife regarding any
17 changes in the manner in which the smelt bio-
18 logical opinion or the salmonid biological opin-
19 ion is implemented; and

20 (B) confirm that those changes are con-
21 sistent with the Endangered Species Act of
22 1973 (16 U.S.C. 1531 et seq.).

23 (b) AREA OF ORIGIN AND WATER RIGHTS PROTEC-
24 TIONS.—

1 (1) IN GENERAL.—The Secretary of the Inte-
2 rior and the Secretary of Commerce, in carrying out
3 the mandates of this Act, shall take no action that—

4 (A) diminishes, impairs, or otherwise af-
5 fects in any manner any area of origin, water-
6 shed of origin, county of origin, or any other
7 water rights protection, including rights to
8 water appropriated before December 19, 1914,
9 provided under State law;

10 (B) limits, expands or otherwise affects the
11 application of section 10505, 10505.5, 11128,
12 11460, 11461, 11462, 11463, or 12200
13 through 12220 of the California Water Code or
14 any other provision of State water rights law,
15 without respect to whether such a provision is
16 specifically referred to in this Act; or

17 (C) diminishes, impairs, or otherwise af-
18 fects in any manner any water rights or water
19 rights priorities under applicable law.

20 (2) SECTION 7 OF THE ENDANGERED SPECIES
21 ACT.—Any action proposed to be undertaken by the
22 Secretary of the Interior and the Secretary of Com-
23 merce pursuant to both this Act and section 7 of the
24 Endangered Species Act of 1973 (16 U.S. C. 1531
25 et seq.) shall be undertaken in a manner that does

1 not alter water rights or water rights priorities es-
2 tablished by California law or it shall not be under-
3 taken at all. Nothing in this section affects the obli-
4 gations of the Secretary of the Interior and the Sec-
5 retary of Commerce under section 7 of the Endan-
6 gered Species Act of 1973.

7 (3) EFFECT OF ACT.—

8 (A) Nothing in this Act affects or modifies
9 any obligation of the Secretary of the Interior
10 under section 8 of the Act of June 17, 1902
11 (32 Stat. 390, chapter 1093).

12 (B) Nothing in this Act diminishes, im-
13 pairs, or otherwise affects in any manner any
14 Project purposes or priorities for the allocation,
15 delivery or use of water under applicable law,
16 including the Project purposes and priorities es-
17 tablished under section 3402 and section 3406
18 of the Central Valley Project Improvement Act
19 (Public Law 102–575; 106 Stat. 4706).

20 (c) NO REDIRECTED ADVERSE IMPACTS.—

21 (1) IN GENERAL.—The Secretary of the Inte-
22 rior and Secretary of Commerce shall not carry out
23 any specific action authorized under this Act that
24 will directly or through State agency action indi-
25 rectly result in the involuntary reduction of water

1 supply to an individual, district, or agency that has
2 in effect a contract for water with the State Water
3 Project or the Central Valley Project, including Set-
4 tlement and Exchange contracts, refuge contracts,
5 and Friant Division contracts, as compared to the
6 water supply that would be provided in the absence
7 of action under this Act, and nothing in this Act is
8 intended to modify, amend or affect any of the
9 rights and obligations of the parties to such con-
10 tracts.

11 (2) ACTION ON DETERMINATION.—If, after ex-
12 ploring all options, the Secretary of the Interior or
13 the Secretary of Commerce makes a final determina-
14 tion that a proposed action under this Act cannot be
15 carried out in accordance with subsection (1), that
16 Secretary—

17 (A) shall document that determination in
18 writing for that action, including a statement of
19 the facts relied on, and an explanation of the
20 basis, for the decision;

21 (B) may exercise the Secretary's existing
22 authority, including authority to undertake the
23 drought-related actions otherwise addressed in
24 this title, or to otherwise comply with other ap-

1 applicable law, including the Endangered Species
2 Act of 1973 (16 U.S.C. 1531 et seq.); and

3 (C) shall comply with subsection (a).

4 (d) ALLOCATIONS FOR SACRAMENTO VALLEY WATER
5 SERVICE CONTRACTORS.—

6 (1) DEFINITIONS.—In this section:

7 (A) EXISTING CENTRAL VALLEY PROJECT
8 AGRICULTURAL WATER SERVICE CONTRACTOR
9 WITHIN THE SACRAMENTO RIVER WATER-
10 SHED.—The term “existing Central Valley
11 Project agricultural water service contractor
12 within the Sacramento River Watershed”
13 means any water service contractor within the
14 Shasta, Trinity, or Sacramento River division of
15 the Central Valley Project that has in effect a
16 water service contract on the date of enactment
17 of this Act that provides water for irrigation.

18 (B) YEAR TERMS.—The terms “Above
19 Normal”, “Below Normal”, “Dry”, and “Wet”,
20 with respect to a year, have the meanings given
21 those terms in the Sacramento Valley Water
22 Year Type (40–30–30) Index.

23 (2) ALLOCATIONS OF WATER.—

24 (A) ALLOCATIONS.—Subject to subsection
25 (c), the Secretary of the Interior shall make

1 every reasonable effort in the operation of the
2 Central Valley Project to allocate water pro-
3 vided for irrigation purposes to each existing
4 Central Valley Project agricultural water service
5 contractor within the Sacramento River Water-
6 shed in accordance with the following:

7 (i) Not less than 100 percent of the
8 contract quantity of the existing Central
9 Valley Project agricultural water service
10 contractor within the Sacramento River
11 Watershed in a “Wet” year.

12 (ii) Not less than 100 percent of the
13 contract quantity of the existing Central
14 Valley Project agricultural water service
15 contractor within the Sacramento River
16 Watershed in an “Above Normal” year.

17 (iii) Not less than 100 percent of the
18 contract quantity of the existing Central
19 Valley Project agricultural water service
20 contractor within the Sacramento River
21 Watershed in a “Below Normal” year that
22 is preceded by an “Above Normal” or
23 “Wet” year.

24 (iv) Not less than 50 percent of the
25 contract quantity of the existing Central

1 Valley Project agricultural water service
2 contractor within the Sacramento River
3 Watershed in a “Dry” year that is pre-
4 ceded by a “Below Normal”, “Above Nor-
5 mal”, or “Wet” year.

6 (v) Subject to clause (ii), in any other
7 year not identified in any of paragraphs
8 (1) through (4), not less than twice the al-
9 location percentage to south-of-Delta Cen-
10 tral Valley Project agricultural water serv-
11 ice contractors, up to 100 percent.

12 (B) EFFECT OF SUBPARAGRAPH.—Nothing
13 in subparagraph (A)(v) precludes an allocation
14 to an existing Central Valley Project agricul-
15 tural water service contractor within the Sac-
16 ramento River Watershed that is greater than
17 twice the allocation percentage to a south-of-
18 Delta Central Valley Project agricultural water
19 service contractor.

20 (3) PROTECTION OF ENVIRONMENT, MUNICIPAL
21 AND INDUSTRIAL SUPPLIES, AND OTHER CONTRAC-
22 TORS.—

23 (A) ENVIRONMENT.—Nothing in para-
24 graph (2) shall adversely affect—

1 (i) the cold water pool behind Shasta
2 Dam;

3 (ii) the obligation of the Secretary of
4 the Interior to make water available to
5 managed wetlands pursuant to section
6 3406(d) of the Central Valley Project Im-
7 provement Act (Public Law 102–575; 106
8 Stat. 4722); or

9 (iii) any obligation—

10 (I) of the Secretaries under the
11 smelt biological opinion, the salmonid
12 biological opinion, or any other appli-
13 cable biological opinion; or

14 (II) under the Endangered Spe-
15 cies Act of 1973 (16 U.S.C. 1531 et
16 seq.) or any other applicable law (in-
17 cluding regulations).

18 (B) MUNICIPAL AND INDUSTRIAL SUP-
19 PLIES.—Nothing in paragraph (2)—

20 (i) modifies any provision of a water
21 service contract that addresses municipal
22 or industrial water shortage policies of the
23 Secretaries;

1 (ii) affects or limits the authority of
2 the Secretaries to adopt or modify munic-
3 ipal and industrial water shortage policies;

4 (iii) affects or limits the authority of
5 the Secretaries to implement a municipal
6 or industrial water shortage policy;

7 (iv) constrains, governs, or affects, di-
8 rectly or indirectly, the operations of the
9 American River division of the Central Val-
10 ley Project or any deliveries from that divi-
11 sion or a unit or facility of that division;
12 or

13 (v) affects any allocation to a Central
14 Valley Project municipal or industrial
15 water service contractor by increasing or
16 decreasing allocations to the contractor, as
17 compared to the allocation the contractor
18 would have received absent paragraph (2).

19 (C) OTHER CONTRACTORS.—Nothing in
20 subsection (b)—

21 (i) affects the priority of any indi-
22 vidual or entity with Sacramento River
23 water rights, including an individual or en-
24 tity with a Sacramento River settlement
25 contract, that has priority to the diversion

6 of water available to the San Joaquin
7 River exchange contractors;

8 (iii) affects the allocation of water to
9 Friant division contractors of the Central
10 Valley Project;

11 (iv) results in the involuntary reduc-
12 tion in contract water allocations to indi-
13 viduals or entities with contracts to receive
14 water from the Friant division; or

15 (v) authorizes any actions inconsistent
16 with State water rights law.

3 **SEC. 10. ASSISTANCE FOR DROUGHT-STRICKEN COMMU-**
4 **NITIES.**

5 (a) AMENDMENT.—Section 9504 of the Omnibus
6 Public Land Management Act of 2009 (42 U.S.C. 10368)
7 is amended—

8 (1) by redesignating subsections (b) through (e)
9 as subsections (c) through (f), respectively; and

10 (2) by inserting after subsection (a) the fol-
11 lowing:

12 “(b) ASSISTANCE FOR DISADVANTAGED COMMU-
13 NITIES WITHOUT ACCESS TO ADEQUATE WATER.—

14 “(1) IN GENERAL.—To assist disadvantaged
15 communities that have experienced a significant de-
16 cline in quantity or quality of drinking water, and to

17 obtain or maintain adequate quantities of water that
18 meet the standards set by the Federal Water Pollu-
19 tion Control Act (33 U.S.C. et seq.), the Secretary
20 of the Interior is authorized to provide grants for
21 communities—

22 “(A) that are unable to meet the primary
23 water quality standards under the Federal
24 Water Pollution Control Act; or

1 “(B) the local private or public water sup-
2 ply of which has been lost or severely dimin-
3 ished due to drought conditions.

4 “(2) ELIGIBLE COMMUNITIES.—Except as pro-
5 vided in subparagraph (B), to be eligible to receive
6 a grant under this subsection, a community shall
7 carry out a project described in paragraph (3), the
8 service area of which—

9 “(A) shall not be located in any city or
10 town with a population of more than 60,000
11 residents; and

12 “(B) has a median household income of
13 less than 100 percent of the nonmetropolitan
14 median household income of the State.

15 “(3) ELIGIBLE PROJECTS.—Projects eligible for
16 this program may be used for—

17 “(A) emergency water supplies;

18 “(B) point of use treatment and point of
19 entry systems;

20 “(C) distributed treatment facilities;

21 “(D) wastewater treatment;

22 “(E) construction of new water source fa-
23 cilities, including wells and connections to exist-
24 ing systems;

25 “(F) water distribution facilities;

1 “(G) connection fees to existing systems;

2 “(H) assistance to households to connect
3 to water facilities; and

4 “(I) any combination of activities described
5 in subparagraphs (A) through (H).

6 “(4) PRIORITIZATION.—In determining prior-
7 ities for funding projects, the Secretary shall take
8 into consideration—

9 “(A) where water outages—

10 “(i) are most imminent; and

11 “(ii) pose the greatest threat to public
12 health and safety; and

13 “(B) the access of the applicant to, or abil-
14 ity to qualify for, alternative funding sources.

15 “(5) MAXIMUM AMOUNT.—The amount of a
16 grant provided under this section may be made up
17 to 100 percent of costs, including—

18 “(A) initial operation costs incurred for
19 start-up and testing of project facilities;

20 “(B) components to ensure such facilities
21 and components are properly operational; and

22 “(C) costs of operation or maintenance in-
23 curred subsequent to placing the facilities or
24 components into service.

1 “(6) NONPROFIT ORGANIZATIONS.—The Sec-
2 retary may use amounts made available to carry out
3 this section to provide grants to, or enter into coop-
4 erative agreements with, nonprofit organizations
5 that can provide onsite technical assistance, assist-
6 ance with implementing source water protection
7 plans, and assistance with implementing monitoring
8 and maintenance plans.

9 “(7) AUTHORIZATION.—There is authorized to
10 be appropriated to the Secretary to carry out this
11 section \$15,000,000 for up to 15 pilot projects to
12 implement the program under this section.”.

4 **SEC. 19. COMPLIANCE WITH THE ENDANGERED SPECIES**
5 **ACT.**

6 (a) IN GENERAL.—Nothing in this title shall amend
7 or otherwise modify the Endangered Species Act of 1973
8 (16 U.S.C. 1536 et seq.).

9 (b) IDENTIFICATION OF CERTAIN CHANGES.—In im-
10 plementing this title, the Secretary of the Interior and the
11 Secretary of Commerce shall, consistent with applicable
12 laws (including regulations), use all available scientific
13 tools to identify any changes to real-time operations of the
14 Bureau of Reclamation, State, and local water projects
15 that could result in the availability of additional water
16 supplies.

17 SEC. 20. SUNSET.

18 The provisions of this Act shall expire of May 31, 2016.

From: Tom Birmingham
Sent: Thursday, December 10, 2015 2:41 PM
To: 'Petersen, Scott'
CC: 'David Bernhardt'; 'Costa, Jim'
Subject: RE: El Nino pitch

Scott,

I think this is a reasonable approach and I hope it will help break the log jam. My only concern is having the legislation expire on May 31, 2016. As you know, the biological opinions constrain project operations through the end of June. Moreover, El Nino events often produce heavy precipitation and runoff events well into May. For these reasons, I believe the legislation should remain in effect through at least June 30, 2016.

Tom

From: Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]
Sent: Thursday, December 10, 2015 11:56 AM
To: tbirmingham@westlandswater.org
Cc: David Bernhardt <dbernhardt@bhfs.com>; Costa, Jim <[REDACTED]@[REDACTED] [REDACTED]>
Subject: El Nino pitch
Importance: High

Good morning Tom and Dave,

Attached, please find a pass at a short term proposal that would extend through May 31, 2016, incorporating a few provisions from the Republican omnibus offer to Senator Feinstein and revised to address the comments from the Administration. The relevant sections that have been included in the proposal are:

- Section _02: Emergency Operations and Reviews
- Section _04: Scientifically supported implementation of OMR flow requirements
- Section _05: Temporary operational flexibility for first few storms of water year
- Section _06: Water rights protections
- Section _07: Assistance for drought stricken communities
- Section _08: Compliance with ESA
- Section _09: Sunset

Please review and provide any comments or revisions as soon as possible. My boss would like to walk this proposal to the Senators today. Also, note that the formatting is a little choppy, I didn't have a word copy of the original proposal from the House Republican staff.

If you have any questions, I'm available via mobile phone at 202-[REDACTED]-[REDACTED]

Best, Scott

J. Scott Petersen, P.E.
Deputy Chief of Staff
Rep. Jim Costa (CA-16)
1314 Longworth House Office Building
Washington, DC 20515
(202) 225-3341

From: Petersen, Scott
Sent: Thursday, December 10, 2015 3:37 PM
To: Tom Birmingham
CC: David Bernhardt; Costa, Jim
Subject: Re: El Nino pitch

Thank you for the recommendation, Tom. We'll incorporate this change.

Sent from my iPhone, with brevity...

On Dec 10, 2015, at 1:41 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Scott,

I think this is a reasonable approach and I hope it will help break the log jam. My only concern is having the legislation expire on May 31, 2016. As you know, the biological opinions constrain project operations through the end of June. Moreover, El Nino events often produce heavy precipitation and runoff events well into May. For these reasons, I believe the legislation should remain in effect through at least June 30, 2016.

Tom

From: Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]

Sent: Thursday, December 10, 2015 11:56 AM

To: tbirmingham@westlandswater.org

Cc: David Bernhardt <dbernhardt@bhfs.com>; Costa, Jim <[REDACTED]@[REDACTED].[REDACTED]>

Subject: El Nino pitch

Importance: High

Good morning Tom and Dave,

Attached, please find a pass at a short term proposal that would extend through May 31, 2016, incorporating a few provisions from the Republican omnibus offer to Senator Feinstein and revised to address the comments from the Administration. The relevant sections that have been included in the proposal are:

- Section _02: Emergency Operations and Reviews
- Section _04: Scientifically supported implementation of OMR flow requirements
- Section _05: Temporary operational flexibility for first few storms of water year
- Section _06: Water rights protections
- Section _07: Assistance for drought stricken communities
- Section _08: Compliance with ESA
- Section _09: Sunset

Please review and provide any comments or revisions as soon as possible. My boss would like to walk this proposal to the Senators today. Also, note that the formatting is a little choppy, I didn't have a word copy of the original proposal from the House Republican staff.

If you have any questions, I'm available via mobile phone at 202-[REDACTED]-[REDACTED]

Best, Scott

J. Scott Petersen, P.E.

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

From: Tom Birmingham
Sent: Thursday, December 10, 2015 4:02 PM
To: 'Petersen, Scott'
CC: 'David Bernhardt'; 'Costa, Jim'
Subject: RE: El Nino pitch

Thank you.

From: Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]
Sent: Thursday, December 10, 2015 2:37 PM
To: Tom Birmingham <tbirmingham@westlandswater.org>
Cc: David Bernhardt <dbernhardt@bhfs.com>; Costa, Jim <[REDACTED]@[REDACTED].[REDACTED].[REDACTED]>
Subject: Re: El Nino pitch

Thank you for the recommendation, Tom. We'll incorporate this change.

Sent from my iPhone, with brevity...

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Scott,

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Sent: Thursday, December 10, 2015 11:56 AM
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Cc: David Bernhardt <dbernhardt@bhfs.com>; Costa, Jim <[REDACTED]@[REDACTED].[REDACTED].[REDACTED]>
Subject: El Nino pitch
Importance: High

Good morning Tom and Dave,

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Best, Scott

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Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

From: Rojewski, Cole

Sent: Monday, December 14, 2015 2:02 PM

To: Smith, Ryan A. (RSmith@BHFS.com); Bernhardt, David L. (DBernhardt@BHFS.com); tbirmingham@westlandswater.org; jamaral@westlandswater.org

CC: Dunklin, Kristina

Subject: Response Needed - Westlands Settlement

Attachments: H.R. XX - San Luis Drainage Resolution Act (Valadao).pdf; Legislative Summary of the San Luis Drainage Resolution Act.pdf; Section by Section of the San Luis Drainage Resolution Act.pdf

FYI- I just sent this out to Exchange, North Friant, Friant, South Friant, and Kern. Let's see if everyone responds in a positive way. Plan is to introduce this week but that could change.

First, thank you for your comments on the draft legislation regarding the Westlands Settlement. After hearing your comments and concerns we have made changes. Attached you will find a revised draft of the San Luis Unit Drainage Resolution Act that should address any concern regarding the bill's impact on CVP contractors. Although we believe the language as drafted and attached to the Westlands drainage settlement agreement will not impact CVP contractors, the additional language should leave no doubt. Section 10 provides:

Implementation of this Act and the Agreements authorized thereunder shall not:

- (a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;
- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or
- (c) Alter the repayment obligation of any long-term water service, repayment, or settlement contractor receiving water or power from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to San Luis Unit Contractors under this Act, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.

This language adequately protects CVP contractors. Also it would be inappropriate to insert matters unrelated to the drainage settlement in this legislation. Moreover, the insertion of any unrelated matters would be inconsistent with previous settlement legislation pertaining to the Central Valley such as the San Joaquin River settlement.

Note, in addition to the changes discussed above, a few clarifying changes in the legislation have been made. In Section 5, added clarifying language providing that Westlands shall not discharge drainage water outside of its boundaries. In Section 8, clarified what facilities at the Mendota Pool will be transferred to Westlands and added the Huron Field Office. Finally, in Section 11, added a provision providing that Westlands will remain financially responsible for contributions to the CVP Restoration Fund in any year where allocation of water for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, in order to avoid shifting such payments from Westlands to CVP preference power contractors.

Should you have any concerns please let me know by close of business TOMORROW December 15, 2015.

Thank you,
Cole

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

.....
(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R.

To affirm an agreement between the United States and Westlands Water
District dated September 15, 2015, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. VALADAO introduced the following bill; which was referred to the
Committee on

A BILL

To affirm an agreement between the United States and
Westlands Water District dated September 15, 2015,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.— This Act may be cited as the
5 “San Luis Unit Drainage Resolution Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

- Sec. 3. Approval of agreements.
- Sec. 4. Relief from drainage obligation.
- Sec. 5. Drainage implementation.
- Sec. 6. Water delivery contracts.
- Sec. 7. Repayment obligations.
- Sec. 8. Transfer of title to certain facilities.
- Sec. 9. Compliance with applicable law.
- Sec. 10. No water supply or financial impacts on other Central Valley Project contractors.
- Sec. 11. Restoration fund payments by Westlands Water District.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) NORTHERLY DISTRICTS AGREEMENT.—The
4 term “Northerly Districts Agreement” means the
5 Agreement among the United States, San Luis
6 Water District, Panoche Water District, and
7 Pacheco Water District.

8 (2) PROJECT.—The term “Project” means the
9 Central Valley Project, owned by the United States
10 and managed by the Department of the Interior,
11 Bureau of Reclamation.

12 (3) PROJECT WATER.—The term “Project
13 Water” means all water that is developed, diverted,
14 stored, or delivered by the Secretary in accordance
15 with the statutes authorizing the Project and in ac-
16 cordance with the terms and conditions of water
17 rights acquired pursuant to California law.

18 (4) REPAYMENT CONTRACT.—The term “repay-
19 ment contract” means the repayment contract con-
20 verted under section 6(a).

1 (5) SAN LUIS ACT.—The term “San Luis Act”
2 means the Act of June 3, 1960 (Public Law 86–
3 488), and all Acts amendatory thereof and supple-
4 mentary thereto.

5 (6) SAN LUIS UNIT.—The term “San Luis
6 Unit” means those lands identified in section 1 of
7 the San Luis Act.

8 (7) SAN LUIS UNIT CONTRACTORS.—The term
9 “San Luis Unit Contractors” means Westlands
10 Water District (including Broadview Water District
11 lands annexed within Westlands Water District),
12 San Luis Water District, Panoche Water District,
13 and Pacheco Water District.

14 (8) SECRETARY.—The term “Secretary” means
15 the Secretary of the Interior.

16 (9) WESTLANDS AGREEMENT.—The term
17 “Westlands Agreement” means the “Agreement be-
18 tween the United States and Westlands Water Dis-
19 trict” to settle litigation concerning the United
20 States’ duty to provide drainage service, entered
21 September 15, 2015.

22 **SEC. 3. APPROVAL OF AGREEMENTS.**

23 Notwithstanding any other provision of law, unless
24 otherwise specified herein, the Secretary is hereby directed

1 to implement the terms and conditions of the Westlands
2 Agreement and the Northerly Districts Agreement.

3 **SEC. 4. RELIEF FROM DRAINAGE OBLIGATION.**

4 The San Luis Act is amended as follows:

5 (1) In the first section—

6 (A) in the second sentence, by striking
7 “distribution systems, drains,”; and

8 (B) in the sixth sentence—

9 (i) by striking “the Secretary has (1)”
10 and inserting “the Secretary has”; and

11 (ii) by striking “, and (2) received”
12 and all that follows through “December,
13 17, 1956”.

14 (2) In section 5, by striking the first sentence
15 and inserting “Notwithstanding any other provision
16 of law, the Secretary of the Interior shall have no
17 duty to provide drainage or drainage service to the
18 San Luis Unit. Each contractor within the San Luis
19 Unit that receives water for the purpose of irrigation
20 shall be responsible for the management of drainage
21 water within its boundaries, in accordance with Fed-
22 eral and California law consistent with the
23 Westlands Agreement and Northerly District Agree-
24 ment respectively.”.

25 (3) In section 8—

1 (A) in the first sentence, by striking “other
2 than distribution systems and drains,”; and

3 (B) in the third sentence—

4 (i) by striking “(a) for construction”
5 and all that follows through “ and (b)”;
6 and

7 (ii) by striking “: *Provided*” and all
8 that follows through “such works are
9 placed in service”.

10 **SEC. 5. DRAINAGE IMPLEMENTATION.**

11 (a) IN GENERAL.—The Westlands Water District
12 shall assume all legal responsibility for the management
13 of drainage water within its boundaries in accordance with
14 Federal and California law, and in accordance with the
15 Westlands Agreement and Westlands Water District shall
16 not discharge drain water outside of its boundaries.

17 (b) EXCEPTION.—In accordance with the Westlands
18 Agreement, the District shall not discharge drain water
19 outside of its boundaries.

20 **SEC. 6. WATER DELIVERY CONTRACTS.**

21 (a) CONTRACT CONVERSION.—The Secretary shall
22 convert the Westlands Water District existing long-term
23 or interim renewal water service contract entered into
24 under section 9(e) of the Act of August 4, 1939 (53 Stat.
25 1196), to a repayment contract under section 9(d) and

1 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195,
2 1194) consistent with the Westlands Agreement.

3 (b) ALLOCATION DECISIONS.—

4 (1) IN GENERAL.—Notwithstanding subsection
5 (a) and as provided in the Westlands Agreement, the
6 Secretary shall make allocation decisions in the
7 Project consistent with the requirements of Federal
8 law (including the Endangered Species Act of 1973
9 and Reclamation law) and applicable California
10 State Water Resources Control Board requirements.

11 (2) CONVERSION OF CONTRACT.—Conversion of
12 Westlands Water District's contract pursuant to
13 subsection (a) shall not afford Westlands Water Dis-
14 trict greater or lesser rights to an annual allocation
15 of Project Water than Westlands Water District had
16 before that conversion.

17 (3) LIMITATION ON LIABILITY.—No liability
18 shall accrue against the United States or any of its
19 officers, agents, or employees for any damage, direct
20 or indirect, arising from a condition of shortage in
21 the amount of water available for delivery to the San
22 Luis Unit Contractors caused by—

23 (A) errors in physical operations of the
24 Project;

1 (B) physical causes beyond the control of
2 the Contracting Officer, including drought; or

3 (C) actions taken by the Contracting Offi-
4 cer to meet legal obligations.

5 (c) WATER SERVICE CONTRACT FOR LEMOORE
6 NAVAL AIR STATION.—

7 (1) CONTRACT REQUIRED.—The Secretary shall
8 enter into a contract under section 9(e) of the Act
9 of August 4, 1939 (53 Stat. 1196), with the Sec-
10 retary of the Navy for the delivery of Project Water
11 to the Lemoore Naval Air Station to meet the irriga-
12 tion needs of Lemoore Naval Air Station associated
13 with air operations. The contract amount of Project
14 Water made available to the Lemoore Naval Air Sta-
15 tion under such contract shall be determined by the
16 Secretary through technical analysis with the
17 Lemoore Naval Air Station.

18 (2) CONDITION OF SHORTAGE.—In any year in
19 which there may occur a condition of shortage in the
20 amount of water available for delivery, the Con-
21 tracting Officer shall allocate the available Project
22 Water amount to Lemoore Naval Air Station in ac-
23 cordance with the allocation steps for municipal and
24 industrial water service contractors under the Cen-
25 tral Valley Project Municipal and Industrial Water

1 Shortage Policy (as in effect on the effective date of
2 the repayment contract). For purposes of deter-
3 mining “historical use” under the policy, past water
4 use for irrigation needs by the Lemoore Naval Air
5 Station under the contract authorized by this section
6 or such use previous to the contract may be consid-
7 ered.

8 **SEC. 7. REPAYMENT OBLIGATIONS.**

9 (a) SUSPENSION OF CAPITAL OBLIGATION.—
10 Westlands Water District’s capital repayment obligation
11 and payments under its water service contracts and the
12 April 1, 1965, repayment contract between the United
13 States and Westlands Water District (contract numbered
14 14–06–200–2020–A) as further defined in subsection (b),
15 is suspended until the execution of the repayment con-
16 tract. Upon execution of that repayment contract,
17 Westlands Water District shall receive a credit against fu-
18 ture operation and maintenance costs payable to the
19 United States in the amount of the capital costs under
20 the water service contracts and the 1965 Repayment Con-
21 tract paid by Westlands Water District between the date
22 of the Westlands Agreement and the date of the enact-
23 ment of this Act. Costs incurred by the United States for
24 revaluating, planning, or providing drainage service to
25 Westlands Water District shall be non-reimbursable, as

1 set forth in paragraph (9)(C)(iv) of the Westlands Agree-
2 ment.

3 (b) RELIEF OF CAPITAL REPAYMENT OBLIGA-
4 TIONS.—Upon the date of execution of the repayment con-
5 tract, and as set forth in the Westlands Agreement, the
6 following shall take effect:

7 (1) IN GENERAL.—Westlands Water District
8 shall be relieved of—

9 (A) its capital repayment obligations under
10 the June 5, 1963, water service contract be-
11 tween the United States and Westlands Water
12 District (contract number 14–06–200–495–A)
13 providing for water service, or any renewals
14 thereof, and any water service contracts as-
15 signed to Westlands Water District, Westlands
16 Distribution District No. 1, and Westlands Dis-
17 tribution District No. 2 existing as of the date
18 of the execution of the Westlands Agreement;
19 and

20 (B) any remaining repayment obligation
21 under the April 1, 1965, repayment contract
22 between the United States and Westlands
23 Water District (contract numbered 14–06–200–
24 2020–A).

1 (2) LIMITATION ON RELIEF.—Repayment relief
2 granted in paragraph (1) shall not extend to—

3 (A) Westlands Water District's operation
4 and maintenance obligations, whether payable
5 to the United States or to an Operating Non-
6 Federal Entity;

7 (B) construction costs or other capitalized
8 costs not yet allocated to or incurred by
9 Westlands Water District as of the date of the
10 Westlands Agreement, including costs attrib-
11 utable to the Folsom Safety of Dams modifica-
12 tions, the B.F. Sisk corrective action study, or
13 any Safety of Dams; or

14 (C) the repayment of future capital costs
15 incurred after the date of execution of the
16 Westlands Agreement.

17 (c) REPAYMENT OF COSTS.—Central Valley Project
18 construction costs or other capitalized costs allocated to
19 Westlands Water District after the date of the Westlands
20 Agreement, and properly assignable to Westlands Water
21 District, shall be repaid in not more than 5 years after
22 notification of the allocation of such amount of less than
23 \$5,000,000. If such amount is \$5,000,000 or greater, such
24 cost shall be repaid as provided by applicable Reclamation
25 law. Any additional costs that may have been assigned to

1 Westlands Water District pursuant to paragraph
2 (9)(C)(iv) of the Westlands Agreement related to the Cen-
3 tral Valley Project final cost allocation shall be non-reim-
4 bursable.

5 (d) APPLICABILITY OF CERTAIN PROVISIONS.—

6 (1) RECLAMATION REFORM ACT.—Upon dis-
7 charge of the capital repayment obligation as pro-
8 vided in subsection (b), the provisions of section
9 213(a) and (b) of the Reclamation Reform Act of
10 1982 (96 Stat. 1269) shall be deemed to apply to
11 lands in Westlands Water District, and the owner-
12 ship and full cost pricing limitations in any provision
13 of Federal reclamation law shall not apply to lands
14 in the District notwithstanding the subsequent allo-
15 cation of construction costs or other capitalized costs
16 to the District. These exemptions shall be carried
17 out in accordance with the process set forth in the
18 Westlands Agreement.

19 (2) OTHER PROVISIONS.—Nothing in this Act is
20 intended to relieve the San Luis Unit Contractors of
21 any other obligations under Reclamation Law in-
22 cluding Restoration Fund charges pursuant to sec-
23 tion 3407(d) of Public Law 102–575.

1 **SEC. 8. TRANSFER OF TITLE TO CERTAIN FACILITIES.**

2 (a) IN GENERAL.—Upon the execution of the repay-
3 ment contract, or as soon thereafter as practicable, the
4 Secretary shall transfer to Westlands Water District title
5 to the following:

6 (1) San Luis Canal System, excluding the main
7 canal that is integrated with the California Aque-
8 duct. These appurtenant features include—

9 (A) internal water distribution system
10 within Westlands, including approximately
11 1,045 miles of buried pipeline;

12 (B) pumping plants within Westlands, in-
13 cluding—

14 (i) San Luis Canal Left and Right
15 Bank pumping plants;

16 (ii) Pumping Plants P1 through P38
17 located at the head end of the gravity
18 laterals to supply the head required for the
19 “P” laterals;

20 (iii) Pumping Plants, tanks, res-
21 ervoirs, relift pumping plants to serve
22 lands west of the San Luis Canal; and

23 (iv) Pumping Plant 7.05 off Lateral
24 7; and

25 (C) related structures, appurtenances,
26 pumping plants, pumps, motors, meters, valves,

1 tanks, transformers, and electrical equipment
2 as specifically identified through the title trans-
3 fer process of federally owned facilities, equip-
4 ment, and real property.

5 (2) Mendota Pool diversion facilities operated
6 by Westlands Water District System, including the
7 following:

8 (A) Inlet Canal from the Fresno Slough.

9 (B) Pumping plants, 6-1, 6-2, 7-1, 7-2.

10 (C) Related structures, appurtenances,
11 pumps, motors, meters, valves, tanks, trans-
12 formers, and electrical equipment as specifically
13 identified through the title transfer process of
14 federally owned facilities, equipment, and real
15 property.

16 (3) Pleasant Valley System, including the fol-
17 lowing:

18 (A) Intake canal and pipeline.

19 (B) Pleasant Valley Pumping Plant.

20 (C) Coalinga Canal, including related
21 check structures, turnouts, and headworks.

22 (D) Pleasant Valley distribution system
23 and pumping plants along the Coalinga Canal.

24 (E) Related structures, appurtenances,
25 pumps, motors, meters, valves, tanks, trans-

1 formers, and electrical equipment as specifically
2 identified through the title transfer process of
3 federally owned facilities, equipment, and real
4 property.

5 (4) Drainage collection system, including the
6 following:

7 (A) Carrier and collector pipelines, sumps,
8 and sump pumps.

9 (B) San Luis Drain from Sta 6678+45 to
10 Sta 8520+22.87. (Crossing with DMC to La-
11 guna Ave crossing.)

12 (C) Related structures, appurtenances,
13 pumps, motors, meters, valves, tanks, trans-
14 formers, and electrical equipment as specifically
15 identified through the title transfer process of
16 federally owned facilities, equipment, and real
17 property.

18 (5) Tranquillity Field Office, including the fol-
19 lowing:

20 (A) Buildings at 32650 West Adams Ave-
21 nue, Tranquillity, CA 93668.

22 (B) All related fixtures and furnishings as
23 specifically identified through the title transfer
24 process of federally owned facilities, equipment,
25 and real property.

1 (6) Huron field office, including the following:

2 (A) Buildings at 32450 South Lassen Ave-
3 nue, Huron, CA 93234.

4 (B) All related fixtures and furnishings as
5 specifically identified through the title transfer
6 process of federally owned facilities, equipment,
7 and real property.

8 (7) All real property interests held by the
9 United States in lands underlying or otherwise asso-
10 ciated with the facilities and equipment listed in this
11 subsection (a), including all fee title, easements, and
12 rights of way.

13 (b) PAYMENT OF COSTS.—Except as specifically pro-
14 vided in this Act, any transfer of title to the Pleasant Val-
15 ley Pumping Plant, the Coalinga Canal, and any associ-
16 ated facilities shall not relieve any other Project Water
17 service or repayment contractor of the requirement to pay
18 any allocated costs associated with those conveyance or
19 pumping facilities that are properly allocated to those con-
20 tractors under existing law and Project ratesetting poli-
21 cies.

22 (c) LIABILITY ON TRANSFER OF TITLE.—Upon
23 transfer of title to any facilities pursuant to subsection
24 (a), Westlands Water District shall, as a condition to such
25 transfer, formally agree as of the date of transfer to—

1 (1) hold the United States harmless and indem-
2 nify the United States for any and all claims, cost,
3 damages, and judgments of any kind arising out of
4 any act, omission, or occurrence relating to the
5 transferred facilities, except for such claims, costs,
6 damages arising from acts of negligence committed
7 by the United States or by its employees, agents, or
8 contractors, prior to the date of title transfer, for
9 which the United States is found liable under the
10 Federal Tort Claims Act; and

11 (2) assume full responsibility for correcting and
12 financing any repairs or deficiencies that may exist
13 at the time of or following title transfer.

14 (d) COMPLIANCE.—The Secretary and Westlands
15 Water District shall comply with all applicable require-
16 ments under Federal and California law before title to a
17 facility is transferred pursuant to this section.

18 **SEC. 9. COMPLIANCE WITH APPLICABLE LAW.**

19 In implementing the measures authorized by this Act,
20 the Secretary shall comply with all applicable Federal
21 laws, rules, and regulations, including the National Envi-
22 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
23 and the Endangered Species Act of 1973 (16 U.S.C. 1531
24 et seq.), as necessary.

1 **SEC. 10. NO WATER SUPPLY OR FINANCIAL IMPACTS ON**
2 **OTHER CENTRAL VALLEY PROJECT CON-**
3 **TRACTORS.**

4 Implementation of this Act and the Agreements au-
5 thorized thereunder shall not—

6 (1) result in the involuntary reduction in the
7 contract water allocation to any Central Valley
8 Project long-term water service, repayment, settle-
9 ment, exchange, or refuge contractor, including con-
10 tractors in the Friant Division of the Central Valley
11 Project;

12 (2) modify, amend or affect any of the rights
13 and obligations of the parties to any Central Valley
14 Project long-term water service, repayment, settle-
15 ment, exchange, or refuge contract, including con-
16 tracts in the Friant Division of the Central Valley
17 Project; or

18 (3) alter the repayment obligation of any long-
19 term water service, repayment, or settlement con-
20 tractor receiving water or power from the Central
21 Valley Project, or shift any costs to other such con-
22 tractors that would otherwise have been properly as-
23 signable to San Luis Unit Contractors under this
24 Act, including operations and maintenance costs,
25 construction costs, or other capitalized costs allo-

1 cated to San Luis Unit Contractors after the date
2 of this Act.

3 **SEC. 11. RESTORATION FUND PAYMENTS BY WESTLANDS**
4 **WATER DISTRICT.**

5 For the purpose of avoiding a shift of Central Valley
6 Project Restoration Fund payments from Westlands
7 Water District to Central Valley Project preference power
8 contractors, for any year in which the allocation of water
9 for south-of-Delta Central Valley Project long-term water
10 service contractors or repayment contractors is greater
11 than 75 percent, the Secretary shall calculate for
12 Westlands Water District a per acre foot Restoration
13 Fund payment based on a projection that Westlands
14 Water District would take delivery of the allocation made
15 to south-of-Delta Central Valley Project long-term water
16 service contractors or repayment contractors.



San Luis Drainage Resolution Act

Legislative Summary

The San Luis Unit Drainage Resolution Act would settle a long-standing dispute between the United States and the Westlands Water District concerning the management of drainage water within Westlands' service area in the San Luis Unit of the Central Valley Project in California. In doing so, it will save the American taxpayers billions of dollars.

The Drainage Problem: In 1960, Congress passed the San Luis Act, authorizing the construction of and operation of the San Luis Unit as a part of CVP with the principal purpose of furnishing water for irrigation of land in Merced, Fresno, and Kings Counties, California. Any water project that brings fresh water to an agricultural area must take the salty subsurface water remaining after the crops have been irrigated away from the root zone, since too-shallow groundwater results in salt buildup in soils and reduces the productivity of farmland. For this reason, the San Luis Act expressly conditioned the construction of the San Luis Unit on the provision for drainage facilities. Although changes in cropping patterns and technological advances in irrigation practices have proven beneficial, the drainage problem within Westlands remains significant.

The United States has a Statutory and Court-Ordered Obligation to Manage Drainage

- The Ninth Circuit Court of Appeals has held that the San Luis Act requires the Secretary of the Interior to provide drainage to the San Luis Unit of the CVP. See *Firebaugh Canal Co. v. United States*, 203 F.3d 568 (9th Cir. 20 00). As a result, in 2000, a federal district court entered an order requiring the Secretary “shall, without delay, provide drainage to the San Luis Unit pursuant to the statutory duty imposed by section 1(a) of the San Luis Act.”
- According to the Bureau of Reclamation, the cost to provide federal drainage service to the San Luis Unit is in excess of \$3.5 billion, when indexed for inflation.

Ongoing Litigation Regarding Drainage

- There are currently several court cases pending regarding the federal government's obligation to provide drainage to Westlands, including a putative class action brought by Westlands landowners in the United States Court of Federal Claims (*Etchegoinberry, et al. v. United States*, No.11-564L (Fed. Cl.)), alleging that the federal government's failure to provide drainage service to their lands effected a physical taking of their property without just compensation in violation of the Fifth Amendment.
- The U.S. estimates that federal liability for just compensation for these taking claims alone could range from zero to \$2 billion.





The Resolution Act, and Underlying Settlement Agreement, Will:

- Settle the above litigation and relieve the U.S. of its multi-billion dollar statutory and court-ordered drainage obligation
- Require Westlands to manage drainage water within its boundaries, in accordance with the federal and California law, and provide the Department of Interior the right to cease water deliveries to Westlands if it fails to do so
- Require Westlands to indemnify the U.S. for any damages and pay compensation for landowner claims arising out of the Etchegoinberry litigation
- Relieve Westlands of its existing approximate \$375 million capital repayment obligations under its water service contract with the United States
- Require Westlands to permanently retire 100,000 acres of land within its boundaries
- Authorize the Secretary of the Interior to convert Westlands' existing water service contract entered into under section 9(e) of the 1939 to a repayment contract under section 9(d) of the same act
- Cap Westlands contract deliveries at 75% of its CVP contract amount

The Resolution Act Will Not:

- Impact Delta water quality since no drainage water will be discharged outside of Westlands' boundaries
- Impact other CVP contractors.

***Northerly Districts Agreement:** The Bureau of Reclamation is in settlement discussions with the Northerly Districts to also settle a dispute concerning the federal government's obligation to provide drainage service to the districts. Since there is no Northerly Districts Agreement at this time, the reference to the districts is merely intended to serve a placeholder. It is anticipated that the parties will reach an agreement relatively soon.

Become a Cosponsor

Contact: Cole.Rojewski@mail.house.gov





San Luis Drainage Resolution Act

Section by Section

The San Luis Unit Drainage Resolution Act (the “Resolution Act”) would settle a long-standing dispute between the United States and the Westlands Water District (“Westlands”) concerning the management of drainage water within Westlands’ service area in the San Luis Unit of the Central Valley Project (CVP) in California. In doing so, it will save the American taxpayers billions of dollars.

Section by Section Analysis

Section 1; Short Title

Provides for the Short Title of the Act.

Section 2; Definitions

Defines various terms in the Act.

Section 3; Approval of Agreements

- a) Directs the Secretary of the Interior to implement the terms and conditions of the Westlands Agreement.
- b) Directs the Secretary of the Interior to the implement the terms and conditions of the Northerly Districts Agreement which is merely intended to serve as place holder language since there is no Northerly Districts Agreement. An agreement, however, may be reached relatively soon.

Section 4; Relief from Drainage Obligation

Amends the San Luis Act to relieve the U.S. of its drainage obligation under the San Luis Act.

Section 5; Drainage Implementation

Provides that Westlands shall be responsible for the management of drainage water within its boundaries, in accordance with federal and California law.

Section 6; Water Delivery Contracts

- a) Directs the Secretary of the Interior to convert Westlands’ existing water service contract entered into under section 9(e) of the 1939 to a repayment contract under section 9(d) of the same act.
- b) Requires the Secretary of the Interior to make allocation decisions in the Project consistent with federal law, including the Federal Endangered Species Act, Reclamation Law, and applicable California State Water Resources Control Board.
- c) Directs the Secretary of the Interior to enter into a 9(d) contract with the Secretary of the Navy for the delivery of CVP water to the Lemoore Naval Air Station.





Section 7; Repayment Obligations

- a) **Suspension of Capital Obligation:** Suspends Westlands' capital repayment obligation and payments under existing water service contracts and 1965 repayment contract between the U.S. and Westlands until the execution of the 9(d) repayment contract.
- b) **Relief of Capital Repayment Obligations:** Relieves Westlands of its capital repayment obligations under its 1963 and 1965 water service contract and water repayment contract respectively with the U.S. Also, the subsection provides that the repayment relief does not extend to Westlands' operation and maintenance obligations.
- c) **Applicability of Certain Provisions –** Provides that upon the discharge of the capital repayment obligations, the provisions of section 213(a) and (b) of the Reclamation Reform Act shall be deemed to apply to Westlands, and the ownership and full cost pricing limitations in any provision of Federal reclamation law shall not apply to lands in the District.

Section 8; Transfer of Title to Certain Facilities

Provides that the Secretary of the Interior shall transfer to Westlands certain facilities upon the execution of the 9(d) repayment contract, or as soon as practicable thereafter.

Section 9; Compliance with Applicable Law

Requires the Secretary of the Interior to comply with all applicable federal laws in implementing the agreement.

Section 10; No Water Supply or Financial Impacts on Central Valley Project Contractors

Provides that the implementation of the Act and the Agreements authorized thereunder shall have no water supply or financial impacts on any CVP contractors.

Section 11; Restoration Fund Payments by Westlands Water District

Requires that Westlands remain financially responsible for contributions to the CVP Restoration Fund in any year where allocation of water for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75% in order to avoid shifting such payments from Westlands to CVP preference power contractors.



From: Stephanie A. Asheim
Sent: Tuesday, December 15, 2015 7:53 AM
To: tbirmingham@westlandswater.org
Subject: Reference for BHFS

Dear Mr. Birmingham,

I work at a law firm in Fargo, ND and one of our clients has received proposals from law firms to assist as special counsel on a large pipeline construction project in ND. David Bernhardt of Brownstein Hyatt Farber Schreck provided your name as a reference. I have a few questions (shouldn't take more than 5 minutes) to ask you. Would you be willing to contact me today or tomorrow? I need to report back to my client by Friday with my results of my reference checks.

I can be reached at 701-356-6349 or if you prefer, we can set up a time for me to call you. Thank you for your assistance.

Regards,
Steph

Stephanie Asheim | Attorney

218 NP Ave Fargo, ND 58102
Phone: 701.356.6349 (direct) | Fax: 701.237.0847
sasheim@vogellaw.com
www.vogellaw.com



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From: Johnny Amaral
Sent: Tuesday, December 15, 2015 11:47 AM
To: 'Rojewski, Cole'
Subject: RE: Response Needed - Westlands Settlement - Friant

David Bernhardt and Ryan Smith are going to call you reiterate what I discussed with you earlier. They are lawyers....hence, much smarter than I

From: Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]
Sent: Tuesday, December 15, 2015 9:42 AM
To: jamaral@westlandswater.org
Subject: FW: Response Needed - Westlands Settlement - Friant

Please keep in house

From: Rojewski, Cole
Sent: Monday, December 14, 2015 4:59 PM
To: 'Jennifer Buckman'; Eric Borba ([REDACTED]@[REDACTED]) ([REDACTED]@[REDACTED])
Cc: William Luce; Dunklin, Kristina
Subject: RE: Response Needed - Westlands Settlement - Friant

Jennifer-

I completely understand. With such short legislative time left I can only extend review time to 12pm pst Wednesday, December 16th. Changes were made that were germane to the nature of the bill, including a protection for CVP users.

Please let me know if you have further questions.

Thank you,
Cole

From: Jennifer Buckman [mailto:j buckman@friantwater.org]
Sent: Monday, December 14, 2015 4:50 PM
To: Rojewski, Cole; Eric Borba ([REDACTED]@[REDACTED]) ([REDACTED]@[REDACTED])
Cc: William Luce
Subject: RE: Response Needed - Westlands Settlement - Friant

Thank you, Cole. To clarify, the only change that has been made in response to Friant contractors' jointly requested language is the change outlined in your email? Does that mean the other proposals the Friant contractors jointly requested were rejected?

Also, as you may be aware, we have State Board meeting on 2016 operations all day tomorrow. Therefore, would it be possible for us to have an extension to respond to you? We simply will not be able to review what you have sent us until Wednesday at the earliest.

Thank you – Jeni

Jennifer T. Buckman
Acting Director of Government Affairs &
General Counsel
Friant Water Authority

916.382.4344 direct

cell

From: Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]

Sent: Monday, December 14, 2015 12:53 PM

To: Jennifer Buckman <jbuckman@friantwater.org>; Eric Borba ([REDACTED]@[REDACTED] [REDACTED]@[REDACTED] [REDACTED]@[REDACTED])

Subject: Response Needed - Westlands Settlement - Friant

Eric and Jennifer-

First, thank you for your comments on the draft legislation regarding the Westlands Settlement. After hearing your comments and concerns we have made changes. Attached you will find a revised draft of the San Luis Unit Drainage Resolution Act that should address any concern regarding the bill's impact on CVP contractors. Although we believe the language as drafted and attached to the Westlands drainage settlement agreement will not impact CVP contractors, the additional language should leave no doubt. Section 10 provides:

Implementation of this Act and the Agreements authorized thereunder shall not:

- (a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;
- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or
- (c) Alter the repayment obligation of any long-term water service, repayment, or settlement contractor receiving water or power from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to San Luis Unit Contractors under this Act, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.

This language adequately protects CVP contractors. Also it would be inappropriate to insert matters unrelated to the drainage settlement in this legislation. Moreover, the insertion of any unrelated matters would be inconsistent with previous settlement legislation pertaining to the Central Valley such as the San Joaquin River settlement.

Note, in addition to the changes discussed above, a few clarifying changes in the legislation have been made. In Section 5, added clarifying language providing that Westlands shall not discharge drainage water outside of its boundaries. In Section 8, clarified what facilities at the Mendota Pool will be transferred to Westlands and added the Huron Field Office. Finally, in Section 11, added a provision providing that Westlands will remain financially responsible for contributions to the CVP Restoration Fund in any year where allocation of water for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, in order to avoid shifting such payments from Westlands to CVP preference power contractors.

Should you have any concerns please let me know by close of business TOMORROW December 15, 2015.

Thank you,
Cole

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

This communication, including any attachments or embedded links, is for the sole use of the intended recipient(s) and may contain information that is confidential or legally protected. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is strictly prohibited. If you have received this communication in error, please do not download any attachments or embedded links, notify the sender immediately by return e-mail message or call, and delete the original and all copies of the communication from your system. Thank you for your anticipated cooperation.

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From: Lombardi, Kyle

Sent: Tuesday, December 15, 2015 1:10 PM

To: 'Tom Birmingham'; Johnny Amaral (jamaral@westlandswater.org); Bernhardt, David L.

Subject: DiFi Water Bill

Tom, Johnny and Dave,

Are you hearing anything on a new CA water bill that Sen. Feinstein is supposedly working on and will release this week?

Kyle

Kyle Lombardi
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

F: 202-225-2908

www.kevinmccarthy.house.gov

www.majorityleader.gov

From: Bernhardt, David L.
Sent: Tuesday, December 15, 2015 1:12 PM
To: Lombardi, Kyle
CC: Tom Birmingham; Johnny Amaral (jamaral@westlandswater.org)
Subject: Re: DiFi Water Bill

kyle: I have not received a draft.

Best,
David

David Bernhardt

On Dec 15, 2015, at 3:10 PM, Lombardi, Kyle <Kyle.Lombardi@mail.house.gov> wrote:

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From: Lombardi, Kyle
Sent: Tuesday, December 15, 2015 1:22 PM
To: 'Bernhardt, David L.'
CC: Tom Birmingham; Johnny Amaral (jamaral@westlandswater.org)
Subject: RE: DiFi Water Bill

Okay. Thanks, Dave.

Kyle Lombardi
Rep. Kevin McCarthy
202-225-2915

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Tuesday, December 15, 2015 3:12 PM
To: Lombardi, Kyle
Cc: Tom Birmingham; Johnny Amaral (jamaral@westlandswater.org)
Subject: Re: DiFi Water Bill

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Best,
David

David Bernhardt

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From: Tom Birmingham
Sent: Tuesday, December 15, 2015 3:40 PM
To: 'Lombardi, Kyle'
CC: 'Johnny Amaral'; 'Bernhardt, David L.'
Subject: RE: DiFi Water Bill

I have not heard anything either. I do know Feinstein was meeting today with representatives of Interior and Commerce.

From: Lombardi, Kyle [mailto:Kyle.Lombardi@mail.house.gov]
Sent: Tuesday, December 15, 2015 12:22 PM
To: 'Bernhardt, David L.' <DBernhardt@BHFS.com>
Cc: Tom Birmingham <tbirmingham@westlandswater.org>; Johnny Amaral (jamaral@westlandswater.org) <jamaral@westlandswater.org>
Subject: RE: DiFi Water Bill

Okay. Thanks, Dave.

Kyle Lombardi
Rep. Kevin McCarthy
202-225-2915

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Tuesday, December 15, 2015 3:12 PM
To: Lombardi, Kyle
Cc: Tom Birmingham; Johnny Amaral (jamaral@westlandswater.org)
Subject: Re: DiFi Water Bill

kyle: I have not received a draft.

Best,
David

David Bernhardt

On Dec 15, 2015, at 3:10 PM, Lombardi, Kyle <Kyle.Lombardi@mail.house.gov> wrote:

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Kyle

Kyle Lombardi
House Majority Leader Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

P: 202-225-2915

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From: Karen Clark
Sent: Tuesday, December 15, 2015 5:06 PM
To: David L. Bernhardt; Catherine Karen
Subject: One More Request

Hi David and Catherine,

Instead of January 29, could you both make a January 28 Annual Strategy Session Meeting? Sorry, this meeting has been a bit difficult to pull together this year.

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Bernhardt, David L.
Sent: Tuesday, December 15, 2015 5:58 PM
To: Karen Clark
Subject: Re: One More Request

Yes

David Bernhardt

On Dec 15, 2015, at 7:05 PM, Karen Clark <kclark@westlandswater.org> wrote:

Hi David and Catherine,

Instead of January 29, could you both make a January 28 Annual Strategy Session Meeting? Sorry, this meeting has been a bit difficult to pull together this year.

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

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From: Karen, Catherine
Sent: Tuesday, December 15, 2015 6:07 PM
To: Karen Clark; David L. Bernhardt
Subject: RE: One More Request

Sure. No problem.

From: Karen Clark
Sent: Tuesday, December 15, 2015 06:05:31 PM
To: David L. Bernhardt; Karen, Catherine
Subject: One More Request

Hi David and Catherine,

Instead of January 29, could you both make a January 28 Annual Strategy Session Meeting? Sorry, this meeting has been a bit difficult to pull together this year.

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

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If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: Tom Birmingham
Sent: Wednesday, December 16, 2015 4:29 PM
To: 'Cole Rojewski'; 'Johnny Amaral'; 'Ryan A. Smith'; 'David L. Bernhardt'
Subject: RE: Response Needed - Westlands Settlement - Friant

Cole,

The language you sent is acceptable to Westlands for inclusion in the drought legislation.

Tom

From: Cole Rojewski [mailto: [REDACTED]@ [REDACTED]]
Sent: Wednesday, December 16, 2015 3:26 PM
To: tbirmingham@westlandswater.org; Johnny Amaral <jamaral@westlandswater.org>; Ryan A. Smith <RSmith@BHFS.com>; David L. Bernhardt <DBernhardt@BHFS.com>
Subject: Fwd: Response Needed - Westlands Settlement - Friant

FYI

Begin forwarded message:

From: Jennifer Buckman <jbuckman@friantwater.org>
Date: December 16, 2015 at 6:11:03 PM EST
To: "Rojewski, Cole" <Cole.Rojewski@mail.house.gov>, "Eric Borba ([REDACTED]@ [REDACTED])
([REDACTED]@ [REDACTED]) < [REDACTED]@ [REDACTED] >
Cc: "Raeder, Joe (jraeder@tfgnet.com)" <jraeder@tfgnet.com>
Subject: RE: Response Needed - Westlands Settlement - Friant

Hi Cole – Sorry I couldn't get back to you earlier today; it has been a very hectic day here.

The Friant contractors asked for 3 concepts to be included in this bill to clarify that Friant Division water rights would not be injured by this program. 2 of those concepts are not in the bill text you sent us on Monday.

The priority concept is a key issue for Friant Water Authority. Language related to the priority concept was worked out amongst all the water users in the context of the federal drought legislation. We do not see any reason why this language, which has already been agreed to by multiple water users, should not be included in this bill. Therefore, please add the highlighted language in the attached bill (which is text we received from Kristina back in November after all parties had agreed to it).

The other concept that the Friant contractors feel must be protected is the recaptured/recirculated water. That concept is not adequately covered in your section 10 language. We are willing to work with other parties to come up with language that is mutually agreeable, but that concept should be included in the bill text.

I will try to call you later today (though I understand it is getting late there) or tomorrow.

Thanks – Jeni

Jennifer T. Buckman
Acting Director of Government Affairs &
General Counsel
Friant Water Authority
916.382.4344 direct
[REDACTED] cell

From: Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]

Sent: Monday, December 14, 2015 12:53 PM

To: Jennifer Buckman <jbuckman@friantwater.org>; Eric Borba ([REDACTED]@[REDACTED] [REDACTED]@[REDACTED] [REDACTED]@[REDACTED])

Subject: Response Needed - Westlands Settlement - Friant

Eric and Jennifer-

First, thank you for your comments on the draft legislation regarding the Westlands Settlement. After hearing your comments and concerns we have made changes. Attached you will find a revised draft of the San Luis Unit Drainage Resolution Act that should address any concern regarding the bill's impact on CVP contractors. Although we believe the language as drafted and attached to the Westlands drainage settlement agreement will not impact CVP contractors, the additional language should leave no doubt. Section 10 provides:

Implementation of this Act and the Agreements authorized thereunder shall not:

- (a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;
- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or
- (c) Alter the repayment obligation of any long-term water service, repayment, or settlement contractor receiving water or power from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to San Luis Unit Contractors under this Act, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.

This language adequately protects CVP contractors. Also it would be inappropriate to insert matters unrelated to the drainage settlement in this legislation. Moreover, the insertion of any unrelated matters would be inconsistent with previous settlement legislation pertaining to the Central Valley such as the San Joaquin River settlement.

Note, in addition to the changes discussed above, a few clarifying changes in the legislation have been made. In Section 5, added clarifying language providing that Westlands shall not discharge drainage water outside of its boundaries. In Section 8, clarified what facilities at the Mendota Pool will be transferred to Westlands and added the Huron Field Office. Finally, in Section 11, added a provision providing that Westlands will remain financially responsible for contributions to the CVP Restoration Fund in any year where allocation of water for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, in order to avoid shifting such payments from Westlands to CVP preference power contractors.

Should you have any concerns please let me know by close of business TOMORROW December 15, 2015.

Thank you,
Cole

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

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From: Tom Birmingham
Sent: Wednesday, December 16, 2015 4:52 PM
To: 'Cole Rojewski'
CC: 'Johnny Amaral'; 'Ryan A. Smith'; 'David L. Bernhardt'
Subject: RE: Response Needed - Westlands Settlement - Friant

I am on a call with John Watts and will call as soon as I am done. What number?

From: Cole Rojewski [mailto: [REDACTED]@ [REDACTED] [REDACTED]]
Sent: Wednesday, December 16, 2015 3:48 PM
To: Tom Birmingham <tbirmingham@westlandswater.org>
Cc: Johnny Amaral <jamaral@westlandswater.org>; Ryan A. Smith <RSmith@BHFS.com>; David L. Bernhardt <DBernhardt@BHFS.com>
Subject: Re: Response Needed - Westlands Settlement - Friant

Can someone call me in the am about it. I need to understand more about the language before I do anything.

Also I'll need to float by exchange contractors again.

On Dec 16, 2015, at 6:29 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

Cole,

The language you sent is acceptable to Westlands for inclusion in the drought legislation.

Tom

From: Cole Rojewski [[mailto: \[REDACTED\]@ \[REDACTED\] \[REDACTED\]](mailto: [REDACTED]@ [REDACTED] [REDACTED])]
Sent: Wednesday, December 16, 2015 3:26 PM
To: tbirmingham@westlandswater.org; Johnny Amaral <jamaral@westlandswater.org>; Ryan A. Smith <RSmith@BHFS.com>; David L. Bernhardt <DBernhardt@BHFS.com>
Subject: Fwd: Response Needed - Westlands Settlement - Friant

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From: Jennifer Buckman <jbuckman@friantwater.org>
Date: December 16, 2015 at 6:11:03 PM EST
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Cc: "Raeder, Joe (jraeder@tfgnet.com)" <jraeder@tfgnet.com>
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Acting Director of Government Affairs &
General Counsel
Friant Water Authority
916.382.4344 direct
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Sent: Monday, December 14, 2015 12:53 PM

To: Jennifer Buckman <jbuckman@friantwater.org>; Eric Borba ([REDACTED]@[REDACTED])
([REDACTED]@[REDACTED]) <[REDACTED]@[REDACTED]>

Subject: Response Needed - Westlands Settlement - Friant

Eric and Jennifer-

First, thank you for your comments on the draft legislation regarding the Westlands Settlement. After hearing your comments and concerns we have made changes. Attached you will find a revised draft of the San Luis Unit Drainage Resolution Act that should address any concern regarding the bill's impact on CVP contractors. Although we believe the language as drafted and attached to the Westlands drainage settlement agreement will not impact CVP contractors, the additional language should leave no doubt. Section 10 provides:

Implementation of this Act and the Agreements authorized thereunder shall not:

- (a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;
- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project long-term water service, repayment, settlement,

- exchange, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or
- (c) Alter the repayment obligation of any long-term water service, repayment, or settlement contractor receiving water or power from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to San Luis Unit Contractors under this Act, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.

This language adequately protects CVP contractors. Also it would be inappropriate to insert matters unrelated to the drainage settlement in this legislation. Moreover, the insertion of any unrelated matters would be inconsistent with previous settlement legislation pertaining to the Central Valley such as the San Joaquin River settlement.

Note, in addition to the changes discussed above, a few clarifying changes in the legislation have been made. In Section 5, added clarifying language providing that Westlands shall not discharge drainage water outside of its boundaries. In Section 8, clarified what facilities at the Mendota Pool will be transferred to Westlands and added the Huron Field Office. Finally, in Section 11, added a provision providing that Westlands will remain financially responsible for contributions to the CVP Restoration Fund in any year where allocation of water for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, in order to avoid shifting such payments from Westlands to CVP preference power contractors.

Should you have any concerns please let me know by close of business TOMORROW December 15, 2015.

Thank you,
Cole

Cole Rojewski
Chief of Staff
Rep. David G. Valadao (CA-21)

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From: Tom Birmingham
Sent: Wednesday, December 16, 2015 5:02 PM
To: 'Cole Rojewski'
CC: 'David L. Bernhardt'; 'Johnny Amaral'; 'Ryan A. Smith'
Subject: RE: Response Needed - Westlands Settlement - Friant

I tried to call. And I am sorry; I thought the language you sent related to the drought legislation, not the settlement legislation. Westlands is not okay with including it in the settlement legislation until we understand what they are trying to achieve.

From: Cole Rojewski [mailto: [REDACTED]@ [REDACTED] [REDACTED]]
Sent: Wednesday, December 16, 2015 3:56 PM
To: Tom Birmingham <tbirmingham@westlandswater.org>
Subject: Re: Response Needed - Westlands Settlement - Friant

559-392-9632

On Dec 16, 2015, at 6:51 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

I am on a call with John Watts and will call as soon as I am done. What number?

From: Cole Rojewski [mailto: [REDACTED]@ [REDACTED] [REDACTED]]
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Cc: Johnny Amaral <jamaral@westlandswater.org>; Ryan A. Smith <RSmith@BHFS.com>; David L. Bernhardt <DBernhardt@BHFS.com>
Subject: Re: Response Needed - Westlands Settlement - Friant

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To: tbirmingham@westlandswater.org; Johnny Amaral <jamaral@westlandswater.org>; Ryan A. Smith <RSmith@BHFS.com>; David L. Bernhardt <DBernhardt@BHFS.com>
Subject: Fwd: Response Needed - Westlands Settlement - Friant

FYI

Begin forwarded message:

From: Jennifer Buckman <jbuckman@friantwater.org>
Date: December 16, 2015 at 6:11:03 PM EST
To: "Rojewski, Cole" <Cole.Rojewski@mail.house.gov>, "Eric Borba
(b)(6) (b)(7)(C) (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)" <(b)(6) (b)(7)(C) (b)(6) (b)(7)(C)>
Cc: "Raeder, Joe (jraeder@tfgnet.com)" <jraeder@tfgnet.com>
Subject: RE: Response Needed - Westlands Settlement - Friant

Hi Cole – Sorry I couldn't get back to you earlier today; it has been a very hectic day here.

The Friant contractors asked for 3 concepts to be included in this bill to clarify that Friant Division water rights would not be injured by this program. 2 of those concepts are not in the bill text you sent us on Monday.

The priority concept is a key issue for Friant Water Authority. Language related to the priority concept was worked out amongst all the water users in the context of the federal drought legislation. We do not see any reason why this language, which has already been agreed to by multiple water users, should not be included in this bill. Therefore, please add the highlighted language in the attached bill (which is text we received from Kristina back in November after all parties had agreed to it).

The other concept that the Friant contractors feel must be protected is the recaptured/recirculated water. That concept is not adequately covered in your section 10 language. We are willing to work with other parties to come up with language that is mutually agreeable, but that concept should be included in the bill text.

I will try to call you later today (though I understand it is getting late there) or tomorrow.

Thanks – Jeni

Jennifer T. Buckman
Acting Director of Government Affairs &
General Counsel
Friant Water Authority
916.382.4344 direct
(b)(6) (b)(7)(C) cell

From: Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]
Sent: Monday, December 14, 2015 12:53 PM
To: Jennifer Buckman <jbuckman@friantwater.org>; Eric Borba
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This language adequately protects CVP contractors. Also it would be inappropriate to insert matters unrelated to the drainage settlement in this legislation. Moreover, the insertion of any unrelated matters would be inconsistent with previous settlement legislation pertaining to the Central Valley such as the San Joaquin River settlement.

Note, in addition to the changes discussed above, a few clarifying changes in the legislation have been made. In Section 5, added clarifying language providing that Westlands shall not discharge drainage water outside of its boundaries. In Section 8, clarified what facilities at the Mendota Pool will be transferred to Westlands and added the Huron Field Office. Finally, in Section 11, added a provision providing that Westlands will remain financially responsible for contributions to the CVP Restoration Fund in any year where allocation of water for south-of-Delta CVP long-term water service contractors or repayment contractors is greater than 75%, in order to avoid shifting such payments from Westlands to CVP preference power contractors.

**Should you have any concerns please let me know by close of business
TOMORROW December 15, 2015.**

Thank you,
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From: Johnny Amaral
Sent: Wednesday, December 16, 2015 5:20 PM
To: 'Cole Rojewski'; 'Tom Birmingham'
CC: 'David L. Bernhardt'; 'Ryan A. Smith'
Subject: RE: Response Needed - Westlands Settlement - Friant

Cole,

Please wait to communicate with Jeni or anyone else until AFTER you connect with Tom tomorrow. Sorry for the delayed response, I was away from my computer for a while.

From: Cole Rojewski [mailto: [REDACTED]@ [REDACTED] [REDACTED]]
Sent: Wednesday, December 16, 2015 4:18 PM
To: Tom Birmingham
Cc: David L. Bernhardt; Johnny Amaral; Ryan A. Smith
Subject: Re: Response Needed - Westlands Settlement - Friant

Sounds good. Let's loop up in the morning.

On Dec 16, 2015, at 7:01 PM, Tom Birmingham <tbirmingham@westlandswater.org> wrote:

I tried to call. And I am sorry; I thought the language you sent related to the drought legislation, not the settlement legislation. Westlands is not okay with including it in the settlement legislation until we understand what they are trying to achieve.

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From: Karen Clark

Sent: Thursday, December 17, 2015 10:37 AM

To: 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; Catherine Karen; Dan Pope; 'David Bernhardt'; Dennis Cardoza; Denny Rehberg; 'Ed Manning'; Emily Lynn Smith; 'Gayle Holman'; Jennifer Walsh; Johnny Amaral; 'Mike Burns'; Pamela Russell; Sheila Greene; 'Susan Ramos'

Subject: Time for PR/Legislation Strategy Session

Importance: High

All,

I forgot to list the time for this meeting. It will begin at 10:00 a.m. and last until 2:00 p.m. or 3:00 p.m.

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Carmela McHenry
Sent: Thursday, December 17, 2015 10:45 AM
To: 'Karen Clark'
Subject: RE: Time for PR/Legislation Strategy Session

Thanks, K. I've reserved **KP Conference Room A** for this meeting.

Let me know if you need assistance with the lunch arrangements. Happy to help you with this matter. We can touch base as the date gets closer. Have a great day!

Best,

Carmela

Carmela McHenry
KP PUBLIC AFFAIRS

1201 K Street, Suite 800, Sacramento, CA 95814
p. 916.448.2162 f. 916.448.4923
w. www.ka-pow.com e. cmchenry@ka-pow.com

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Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Karen Clark
Sent: Thursday, December 17, 2015 11:01 AM
To: 'Carmela McHenry'
Subject: RE: Time for PR/Legislation Strategy Session

Hi Carmela,

I do need you to make lunch arrangements. I can give you my credit card if you'd like. Let me know. We probably need coffee, water and juice in the morning also. Thanks, Carmela! ☺

~Karen

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(f) 559.241.6277
Email: kclark@westlandswater.org

From: Carmela McHenry [mailto:cmchenry@ka-pow.com]
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w. www.ka-pow.com e. cmchenry@ka-pow.com

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Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Carmela McHenry
Sent: Thursday, December 17, 2015 11:20 AM
To: 'Karen Clark'
Subject: RE: Time for PR/Legislation Strategy Session
Attachments: Ambrosia Lunch menu.pdf

You're welcome, Karen. No need to give us a credit card to pay for the lunch. I will charge the lunch to our account and then our bookkeeper will send an invoice to Westlands at the end of the month in January. I'll make sure that there is coffee and water in the morning also. We don't have juice in the office but if this is something that you want for the meeting, I can stop by the grocery store in the morning.

Attached is the lunch menu from Ambrosia catering that we use for our meetings. If you want to keep it simple, I recommend the following. Please let me know what works for you and the headcount. Thanks.

AMBROSIA SIGNATURE SANDWICH PLATTER

A variety of Ambrosia signature sandwiches, served with seasonal salad & cookie.
All sandwiches are prepared on one of the following breads: herb focaccia, ciabatta,
whole wheat or sourdough bread.
\$10.95 per person

Tri-tip with cheddar cheese & horseradish cream

Grilled chicken breast with spinach pesto, feta cheese, & field greens

Slow roasted eggplant with hummus, roasted tomato & feta cheese

Roasted turkey breast, caramelized onion, provolone cheese, & herb mayonnaise

Black forest ham with Gruyere cheese & Dijon mustard

Mediterranean tuna salad and field greens

Carmela McHenry
KP PUBLIC AFFAIRS

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Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org



Lunch Menu

TRADITIONAL DELI PLATTER

A variety of select cut delicatessen meats, domestic cheeses, mayonnaise, mustard, leaf lettuce, tomatoes and fresh baked breads served with seasonal salad & cookie.
\$10.95 per person

AMBROSIA SIGNATURE SANDWICH PLATTER

A variety of Ambrosia signature sandwiches, served with seasonal salad & cookie.
All sandwiches are prepared on one of the following breads: herb focaccia, ciabatta, whole wheat or sourdough bread.
\$10.95 per person

SPECIALTY DELI PLATTER

Grilled chicken breast, roasted turkey breast, marinated, grilled tri-tip, Albacore tuna salad, selection of cheeses, grilled vegetables, olives, caramelized onions, leaf lettuce, specialty spreads and fresh baked breads served with seasonal salad & cookie.
\$12.95 per person

BOX LUNCHES

Sandwich served with seasonal salad & cookie.
\$10.95 per person

Choose from the following:

- Tri-tip with cheddar cheese & horseradish cream
- Grilled chicken breast with spinach pesto, feta cheese, & field greens
- Slow roasted eggplant with hummus, roasted tomato & feta cheese
- Roasted turkey breast, caramelized onion, provolone cheese, & herb mayonnaise
- Black forest ham with Gruyere cheese & Dijon mustard
- Mediterranean tuna salad and field greens

Additional items

Cookies	\$1.00 per person
Beverages	\$1.25 per person
Dessert bars	\$2.00 per person

MINIMUM ORDER OF 10 ON ALL LUNCH MENU ITEMS

For assistance please call (916) 929-3068.



Lunch Menu

All entrees include a big green salad served with bread & butter.

Choice of herb roasted chicken breast, marinated grilled tri tip or balsamic glazed salmon filet served with seasonal vegetable
\$12.95 chicken | \$13.95 tri-tip | \$14.95 salmon per person

Traditional meat or vegetable lasagna with a house made marinara sauce & garlic bread
\$11.95 with vegetables, per person
\$12.95 with meat, per person

Honey-Dijon marinated pork loin with caramelized onion mashed potatoes
\$13.95 per person

Creamy pesto chicken over al dente pasta Primavera
\$12.95 per person

Balsamic-brown sugar glazed chicken breast with rosemary roasted red potatoes
\$12.95 per person

Old fashioned pot roast with roasted root vegetables
\$12.95 per person

Hoisin barbequed chicken breast with Asian slaw* & jasmine rice
\$13.75 per person

Herb crusted salmon fillet with lemon caper tartar sauce & basmati rice with fresh dill
\$14.95 per person

Home style meatloaf with garlic roasted mashed potatoes & pan gravy
\$11.95 per person

Quattro formaggio tortellini with our signature creamy mushroom sauce
\$11.95 per person

Slow roasted turkey breast with sweet garlic mashed potatoes, gravy & cranberry-orange relish
\$13.95 per person

Let our staff help to compose a menu to fit your needs.

MINIMUM ORDER OF 10

* ASIAN SALAD SUBSTITUTED FOR GREEN SALAD

For assistance please call (916) 929-3068.

Salad Menu

Our salads are made with the freshest seasonal produce, locally grown whenever possible.

Our Chef will create a salad especially for you.

Classic Caesar salad with sweet romaine hearts, house made croutons, parmesan cheese & traditional dressing

Tarragon chicken salad with roasted breast of chicken, crunchy celery, sweet red onion, & creamy tarragon dressing served over greens

Phat Thai noodle salad with snow peas, sprouts, sweet pepper, shredded cabbage, zucchini, scallions, cilantro & Thai dressing

Baby spinach salad with spiced pecans, mandarin oranges, marinated red onion, Jarlsberg cheese & orange balsamic vinaigrette

Chopped Cobb salad with crisp romaine lettuce, blue cheese, bacon, avocado, tomatoes, grilled chicken breast & creamy herb ranch dressing

Broccoli Crunch salad with bacon, raisins, spiced pecans, red onion & blue cheese tossed with creamy honey, apple cider dressing

Greek salad with sweet tomatoes, cucumbers, red onion, kalamata olives, feta cheese & red wine vinaigrette

California harvest salad with Granny Smith apples, crunchy walnuts, dried cranberries, goat cheese & cider vinaigrette on baby spinach

Lemongrass beef salad with rice noodles, fresh basil, cilantro & mint, bean sprouts, julienne vegetables, leaf lettuce & Vietnamese dressing

Curry chicken salad with jasmine rice, breast of chicken, coconut milk, almonds, raisins, celery & Madras curry dressing

Mediterranean lentil salad with feta cheese, roasted red pepper, celery, scallion, kalamata olives, parsley & sherry vinaigrette

Baked potato salad with bacon, green onion, cheddar cheese, broccoli & sour cream dressing

continued on next page. . .



Salad Menu

Rosemary roasted potato salad with tender greens, fresh lemon juice, olive oil, garden herbs & Dijon mustard vinaigrette

Marinated tofu salad with celery, scallions, cilantro, green peppers, & spicy Asian dressing

Seasonal roasted vegetable salad tossed with roasted garlic, Balsamic vinegar, olive oil & fresh herbs served on a bed of baby greens

Southwest chicken salad with grilled chicken breast, sweet corn, tomato, green onion, cilantro, squash, roasted pepper & cumin-lime dressing

Tabouli salad with fresh chopped parsley, bulgar wheat, fresh squeezed lemon juice, olive oil, mint, red onion & red pepper

Nicoise salad with Albacore tuna, blanched green beans, hard cooked eggs, sweets peppers, capers, red potatoes & olives tossed with Dijon dressing

Chinese chicken salad with carrot, red pepper, cabbage, tomato, scallions, served on a bed of field greens & hoisin ginger dressing

Turkey & wild rice salad with sun dried cranberries, celery, red onion & Champagne vinaigrette

Asian noodle salad with red bell pepper, scallions, carrots, Napa cabbage, bean sprouts & sesame-soy dressing

All Salads

\$3.95 per serving, per person

Salad Sampler

Choice of any three salads served with bread, butter and a house baked cookie
\$10.95 per person

Poultry, beef or seafood can be added to any of the above salads and dinner portions available for an additional charge. Please contact us for pricing.

MINIMUM ORDER OF 10

For assistance please call (916) 929-3068.

From: Karen Clark
Sent: Thursday, December 17, 2015 12:37 PM
To: 'Carmela McHenry'
Subject: RE: Time for PR/Legislation Strategy Session

Hi Carmela,

Don't make an extra trip to the grocery store. I think water and coffee in the morning will be fine. The lunch menu looks great. Let's have lunch available for 22 people.

Thanks again!

~Karen

Karen Clark
Executive Assistant to Thomas W. Birmingham
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
(c) [REDACTED]
(f) 559.241.6277
Email: kclark@westlandswater.org

From: Carmela McHenry [mailto:cmchenry@ka-pow.com]
Sent: Thursday, December 17, 2015 10:20 AM
To: 'Karen Clark'
Subject: RE: Time for PR/Legislation Strategy Session

You're welcome, Karen. No need to give us a credit card to pay for the lunch. I will charge the lunch to our account and then our bookkeeper will send an invoice to Westlands at the end of the month in January. I'll make sure that there is coffee and water in the morning also. We don't have juice in the office but if this is something that you want for the meeting, I can stop by the grocery store in the morning.

Attached is the lunch menu from Ambrosia catering that we use for our meetings. If you want to keep it simple, I recommend the following. Please let me know what works for you and the headcount. Thanks.

AMBROSIA SIGNATURE SANDWICH PLATTER

A variety of Ambrosia signature sandwiches, served with seasonal salad & cookie.
All sandwiches are prepared on one of the following breads: herb focaccia, ciabatta,
whole wheat or sourdough bread.
\$10.95 per person

Tri-tip with cheddar cheese & horseradish cream
Grilled chicken breast with spinach pesto, feta cheese, & field greens
Slow roasted eggplant with hummus, roasted tomato & feta cheese
Roasted turkey breast, caramelized onion, provolone cheese, & herb mayonnaise
Black forest ham with Gruyere cheese & Dijon mustard
Mediterranean tuna salad and field greens

Carmela McHenry
KP PUBLIC AFFAIRS

1201 K Street, Suite 800, Sacramento, CA 95814
p. 916.448.2162 f. 916.448.4923
w. www.ka-pow.com e. cmchenry@ka-pow.com

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From: Karen Clark [<mailto:kclark@westlandswater.org>]
Sent: Thursday, December 17, 2015 10:01 AM
To: Carmela McHenry
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Hi Carmela,

I do need you to make lunch arrangements. I can give you my credit card if you'd like. Let me know. We probably need coffee, water and juice in the morning also. Thanks, Carmela! ☺

~Karen

Karen Clark
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Email: kclark@westlandswater.org

From: Carmela McHenry [<mailto:cmchenry@ka-pow.com>]
Sent: Thursday, December 17, 2015 9:45 AM
To: 'Karen Clark'
Subject: RE: Time for PR/Legislation Strategy Session

Thanks, K. I've reserved **KP Conference Room A** for this meeting.

Let me know if you need assistance with the lunch arrangements. Happy to help you with this matter. We can touch base as the date gets closer. Have a great day!

Best,

Carmela

Carmela McHenry
KP PUBLIC AFFAIRS

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To: Alison MacLeod; Carmela McHenry; Carolyn Jensen; Catherine Karen; Dan Pope; 'David Bernhardt'; Dennis Cardoza; Denny Rehberg; Ed Manning; Emily Lynn Smith; 'Gayle Holman'; Jennifer Walsh; Johnny Amaral; Michael Burns; Pamela Russell; Sheila Greene; 'Susan Ramos'

Subject: Time for PR/Legislation Strategy Session

Importance: High

All,

I forgot to list the time for this meeting. It will begin at 10:00 a.m. and last until 2:00 p.m. or 3:00 p.m.

~Karen

Karen Clark

Executive Assistant to Thomas W. Birmingham

Westlands Water District

P.O. Box 6056

Fresno, CA 93703

(c) [REDACTED]

(f) 559.241.6277

Email: kclark@westlandswater.org

From: Tom Birmingham
Sent: Thursday, December 17, 2015 4:22 PM
To: 'Cole Rojewski'
CC: 'Jennifer Buckman'; 'David Orth'; 'David L. Bernhardt'; 'Ryan A. Smith'
Subject: Friant Language
Attachments: 12 17 15 Drainage Leg Amendment.doc.docx

Cole,

I spoke with Jeni Buckman and Dave Orth, by conference call, regarding the issues they raised with you. Based on those discussions, I believe the issues they raised are germane to Reclamation's potential implementation of the drainage settlement and related agreements. During the discussion we agreed to the attached language for inclusion in the drainage authorizing legislation. I believe this will resolve any issue the Friant districts may have.

Tom

Proposed language to be included in Westlands Drainage Settlement Legislation:

Implementation of this Act and the Agreements authorized thereunder shall not:

- (a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;*
- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or*
- (c) Alter the repayment obligation of any long-term water service, repayment, or settlement contractor receiving water or power from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to San Luis Unit Contractors under this Act, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.*
- (d) Impair the ability of the United States to implement Paragraph 16 (The Water Management Goal) of the Stipulation of Settlement entered by the parties to Natural Resources Defense Council, et al. v. Rogers, et al, (Case NO CIV S-88-1658 (LKK/GGH) E.D.Cal.) dated September 13, 2006, as authorized to be implemented by Title X of Public Law 111-11.*
- (e) Diminish, impair, or otherwise affect in any manner any priorities for the allocation, delivery or use of water under applicable law, including any purposes of use and priorities established by Sections 3402 and 3406 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706).*

From: Carmela McHenry
Sent: Thursday, December 17, 2015 4:42 PM
To: 'Karen Clark'
Subject: RE: Time for PR/Legislation Strategy Session

You're welcome, Karen. You're all set for lunch on the 28th. The total amount for 22 people is \$312.37.

If you need anything else, please don't hesitate to call me at 916-498-7711.

Best,

Carmela

Carmela McHenry
KP PUBLIC AFFAIRS

1201 K Street, Suite 800, Sacramento, CA 95814
p. 916.448.2162 f. 916.448.4923
w. www.ka-pow.com e. cmchenry@ka-pow.com

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Thanks again!

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Carmela McHenry

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~Karen

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Westlands Water District

P.O. Box 6056

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(c) [REDACTED]

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Email: kclark@westlandswater.org

From: Lombardi, Kyle
Sent: Friday, December 18, 2015 12:56 PM
To: 'tbirmingham@westlandswater.org'
CC: 'jamaral@westlandswater.org'; 'DBernhardt@BHFS.com'
Subject: Re: DiFi Water Bill

I don't think she's introduced anything. Have you guys seen anything?

-----Original Message-----

From: Tom Birmingham
To: Kyle Lombardi
Cc: 'Johnny Amaral'
Cc: David L. Bernhardt
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Sent: Dec 15, 2015 5:40 PM

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To: 'Bernhardt, David L.' <DBernhardt@BHFS.com>
Cc: Tom Birmingham <tbirmingham@westlandswater.org>; Johnny Amaral (jamaral@westlandswater.org) <jamaral@westlandswater.org>
Subject: RE: DiFi Water Bill

Okay. Thanks, Dave.

Kyle Lombardi
Rep. Kevin McCarthy
202-225-2915

From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]
Sent: Tuesday, December 15, 2015 3:12 PM
To: Lombardi, Kyle
Cc: Tom Birmingham; Johnny Amaral (jamaral@westlandswater.org)
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Washington, D.C. 20515

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www.kevinmccarthy.house.gov

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To: 'Lombardi, Kyle'
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To: 'tbirmingham@westlandswater.org'
CC: 'jamaral@westlandswater.org'; 'DBernhardt@BHFS.com'
Subject: Re: DiFi Water Bill

Over Christmas? We'll see.

Thanks, Tom.

----- Original Message -----

From: Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]
Sent: Friday, December 18, 2015 03:11 PM
To: Lombardi, Kyle
Cc: jamaral@westlandswater.org <jamaral@westlandswater.org>; DBernhardt@BHFS.com <DBernhardt@BHFS.com>
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CC: DBernhardt@BHFS.com
Subject: RE: DiFi Water Bill

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P: 202-225-2915
F: 202-225-2908

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From: DCardoza@foley.com

Sent: Monday, December 21, 2015 11:07 AM

To: jamaral@westlandswater.org; Bernhardt David Longly; Rehberg Denny; Karen Catherine

Subject: I'm on the line

Are we doing the 1pm call today? Dennis

Sent from my iPhone

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From: Johnny Amaral
Sent: Monday, December 21, 2015 11:11 AM
To: DCardoza@foley.com
CC: Bernhardt David Longly; Rehberg Denny; Karen Catherine
Subject: Re: I'm on the line

I'm in a mtg with Tom at the moment

Best,

Johnny Amaral

> On Dec 21, 2015, at 10:07 AM, "DCardoza@foley.com" <DCardoza@foley.com> wrote:

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From: Denny Rehberg
Sent: Monday, December 21, 2015 11:12 AM
To: Johnny Amaral
CC: DCardoza@foley.com; Bernhardt David Longly; Karen Catherine
Subject: Re: I'm on the line

I thought not since we will be calling in an hour

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> Johnny Amaral

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>

.....
Mercury.

Denny Rehberg

Co-Chairman

(US Congressman 2001-2013)

The Portrait Building

701 8th Street NW | Suite 650

Washington, DC | 20001

202.261.4000 office | [REDACTED] mobile

www.mercuryllc.com

From: Bernhardt, David L.
Sent: Monday, December 21, 2015 11:13 AM
To: Denny Rehberg
CC: Johnny Amaral; DCardoza@foley.com; Karen Catherine
Subject: Re: I'm on the line

I thought our weekly calls were off, although we have the 2 with Tom.

Sent from my iPhone

On Dec 21, 2015, at 1:12 PM, Denny Rehberg <DRehberg@mercuryllc.com> wrote:

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>

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<image1862f2.JPG>

Denny Rehberg

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From: Johnny Amaral
Sent: Monday, December 21, 2015 11:16 AM
To: 'Bernhardt, David L.'; 'Denny Rehberg'
CC: DCardoza@foley.com; 'Karen Catherine'
Subject: RE: I'm on the line

Sorry guys. Tom asked me into his office unexpectedly and I missed the call.

From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]
Sent: Monday, December 21, 2015 10:13 AM
To: Denny Rehberg <DRehberg@mercuryllc.com>
Cc: Johnny Amaral <jamaral@westlandswater.org>; DCardoza@foley.com; Karen Catherine <ckaren@sidley.com>
Subject: Re: I'm on the line

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Sent from my iPhone

On Dec 21, 2015, at 1:12 PM, Denny Rehberg <DRehberg@mercuryllc.com> wrote:

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<image1862f2.JPG>

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From: Bernhardt, David L.

Sent: Tuesday, December 22, 2015 1:26 PM

To: Johnny Amaral

Subject: POLITICO California Playbook, presented by Chevron: MCCARTHY challenge to Feinstein -- MONSTER snails -- HEARST icon crumbling - POLITICO

FYI

<http://www.politico.com/tipsheets/california-playbook/2015/12/politico-california-playbook-presented-by-chevron-mccarthy-challenge-to-feinstein-monster-snails-hearst-icon-crumbling-211897>

David Bernhardt

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From: Johnny Amaral

Sent: Monday, December 28, 2015 8:35 AM

To: Dennis Cardoza; David Bernhardt; Denny Rehberg; Catherine Karen; Ryan A. ' 'Smith

Subject: Reminder

No call today. I hope you had a great Christmas.

Best,

Johnny Amaral